Discussing these seriatim, we shall first consider the Smith Act and the prior decisions of the Supreme Court of the United States in analogous cases.

Section 2(a)(1) of the Smith Act, as amended, makes it unlawful "to knowingly or wilfully advocate . . . or teach the duty, necessity, desirability or the propriety of overthrowing or destroying any government in the United States [changed by the Amendment of June 25, 1948 to read "*the government of the United States or the government of any state*] by force or violence, ..." Section 2(a)(3) makes it unlawful "to organize or help to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow or *destruction of any government in the United States* [changed to read "*the government of the United States or the government of any state*] by force or violence. . . ."

The language and meaning of the Smith Act are absolutely clear. The majority opinion asserts that in spite of the clear language of the Smith Act, and even though it never said so, Congress clearly intended to supersede and suspend the Pennsylvania Sedition Act. The question that will instantly arise in everyone's mind is this—*if that was the Congressional intent in a matter which concerns the very existence of our Country, why didn't Congress clearly and plainly say so?*

[fol. 115] If the language or intent or meaning or effect of an Act is not explicit or clear, the intention of Congress is to be gathered not only from a consideration of the language of the Act but also by examining the prior law upon the subject; the conditions or circumstances which caused the enactment or change; the mischief, if any, to be remedied; the goal or objectives to be attained; and the results which will likely flow from a construction contended for by each of the parties involved; Cf. *United States v. C.I.O.*, 335 U.S. 106, 112; *Martin Estate*, 365 Pa. 280, 74 A. 2d 120; *Phipps v. Kirk*, 333 Pa. 478, 5 A. 2d 143; *Orlosky v. Haskell*, 304 Pa. 57, 66, 155 A. 112; *Williamson's Estate*, 368 Pa. 343, 355, 82 A. 2d 49.

At the time of the passage of the revised Smith Act on June 25, 1948, which punished (as we have seen) any person who "knowingly or wilfully advocates . . . overthrow-

ing or destroying the government of the United States *or* the government of any state . . . by force or violence . . .", Congress knew the following facts which are very important in determining whether it intended to preempt the field and suspend all State legislation designed to protect our Country from its mortal enemies.

1. State sedition and treason laws were nothing new; they had existed for over 100 years. Congress knew that in spite of the fact that the Constitution of the United States gave it, in Article III, § 3(2), the power to punish treason, *forty-seven (47)* Sovereign States of the United States of America, vitally and patriotically concerned with the safety of their citizens, the security of our Country and the preservation of their State and Country's Governments, have a Constitutional provision or had passed laws (as early as 1818) punishing the crime of treason.* Congress also knew that *thirty-seven (37)* Sovereign States had over a long [for a] period of years passed statutes defining and punishing sedition, syndicalism, and other activities aimed at the overthrow of our government by force.* All of these State statutes throughout our entire Country will be superseded and suspended or invalidated, if the majority opinion in this case is sustained by the Supreme Court of the United States.

In 1790 Congress enacted an Act defining and punishing treason.** In 1861 Congress passed the Sedition Conspiracy Act.*** *Never once has the Supreme Court of the United States held that the congressional act punishing treason or the congressional act punishing sedition preempted the field or superseded and nullified state acts punishing these crimes*, or prohibited states from thereafter passing complementary statutes punishing these crimes. While this is not conclusive it is certainly persuasive that Congress did not intend by the Smith Act to supersede and

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* Federal Bar Assn. Journal, Vol. 9, p. 71 (1947).

* Annual Report of the Committee on Un-American Activities for the year 1949; House Report No. 1950, Union Calendar No. 727, 81st Congress, 2nd session, page 30.

** 18 U.S.C. §§ 1 and 2.

*** 18 U.S.C., § 6.

invalidate the mass of state legislation punishing treason, sedition, criminal anarchy, etc., some of which has been in existence for 100 years. Furthermore, *twenty-six (26)* States have passed laws which expressly or in effect *bar state employment* to persons who teach or advocate the overthrow of government by force or violence, or who print or sell documents advocating such doctrines, or who organize groups aimed at overthrowing the government.**** If the majority opinion prevails, isn't it clear as crystal that all these State laws will be superseded and suspended or invalidated by the Smith Act; and if so, what will it cost the States in the way of damages and other remedial actions? And if the majority opinion prevails, what will happen to [fol. 117] all the traitors and dangerous criminals who have been convicted under state acts and whose sentences have not been finally determined, as well as those who are now in state jails serving sentences for violating state treason or sedition or similar laws? And most important of all, what will happen to the security of our Country when the patriotic efforts of all state legislatures, district attorneys and Courts and of all patriotic citizens anxious to catch and punish traitors, are rejected, and the existence of our State and Nation is left exclusively to the slow processes of our sometimes apathetic or inept Federal Government?

2. The Smith Act is patterned after and is almost identical with the New York Statute punishing sedition, the constitutionality of which had been sustained in the famous case of *Gitlow* v. *New York*, 268 U.S. 652 (1925), which was cited with approval by the Supreme Court of the United States as recently as 1951 in *Dennis* v. *United States*, 341 U.S. 494.

3. Congress also knew that due to public statements and tidal waves of pro-Russian propaganda issued since 1933 by some of the highest officials of our Government in Washington, the true nature and the real aims and objectives of Communism were so diluted and distorted that for many years they were hidden from the Congress as

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**** Annual Report of the Committee on Un-American Activities for the year 1949; House Report No. 1950; Union Calendar No. 727, 81st Congress, 2nd session, page 45.

well as from the American people. Communism by its teachings and by its acts and deeds is our mortal enemy. Marxist Communism, as interpreted, promulgated and established by Stalin, teaches, advocates, plans and plots (a) a world revolution by and for the proletariat; (b) the overthrow and capture of every Government in the world by sabotage, force and violence; and (c) the dictatorial, ruthless, atheistic rule of every country by ukase and force for the (pretended) benefit of (a tiny percentage of) the proletariat known as Communists.

4. Moreover, Congress at the time it passed the revised Smith Act in 1948 knew more than this. It knew that de- [fol. 118] spite the activities of our wonderful FBI,* communists had infiltrated into many key positions (a) in the State Department, and (b) in many other departments of the Federal Government; it knew that important documents and atomic and other vital secrets had been stolen by or for the communists, thus jeopardizing the safety of our Country; it knew even then that the Federal Government had in many instances failed to protect our Country from the insidious and treacherous acts of communists; and most important of all, it knew that the Federal Government, even if it were willing, had demonstrated that it was unable *alone* to cope with this hidden octopusian menace to our Country. Congress further knew that our Country needed, in order to combat the widespread and occult perils of communism, the help not only of the FBI and of all Federal district attorneys and of all officials in every Federal department and agency of Government, but it also needed the active assistance and cooperation of all States, and all State Courts, and all State officers and agencies, as well as the enthusiastic help of every patriotic American citizen. Congress also knew that juries are sometimes fooled or duped by false testimony or by clever lawyers and thus acquit those who are guilty of grave crimes, and it would certainly be wise to have State officers, State Courts, and State juries give to our

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* The American people have been shocked by recent revelations showing the extent to which FBI warnings about Communists were ignored by former heads of the Federal Government.

Country additional help and protection against those who are attempting to destroy our Government.

5. Congress also knew that the States had passed statutes on many subjects and in many analogous fields over which the Constitution gave power to Congress; and that these statutes had nevertheless been sustained by the Supreme Court of the United States. For example, State Sedition acts had been sustained by the Supreme Court; State acts which regulated or taxed Interstate Commerce had been sustained; State acts pertaining to counterfeiting (although Congress alone had power to coin money and regulate the value thereof) had been sustained; and State acts [fol. 119] restricting or regulating labor activities had been sustained under the State's police power even though the Wagner Act, the Taft-Hartley Act and other labor legislation had seemingly preempted the field. Moreover, Congress has enacted statutes punishing the same or similar criminal acts as has the State of Pennsylvania involving firearms, narcotic drugs, explosives, blackmail, conspiracy against rights of citizens, counterfeiting of coins, embezzlement, kidnapping, homicide, prostitution, burglary, wrecking of trains, train robbery, bank robbery, sabotage, treason, lotteries, obscene books and pictures, false and fraudulent bank entries, bribery, violation of election laws, and other crimes, too numerous to mention. Notwithstanding Congressional legislation on these criminal offenses, state prosecutions and indictments under similar state laws have always been sustained.

Congress, with a full knowledge of all of the foregoing facts, passed the Smith Act in 1940 and the revised Smith Act in 1948.

In the light of all these facts, circumstances and conditions and in the face of the decisions of the Supreme Court in analogous cases, how is it possible to assert, as does the majority, that Congress intended, although it never said or even suggested so in a single sentence or by a single word, (1) to supersede and to nullify or suspend all State legislation and all State statutes which protected our Country, and (2) to preempt the crime of Sedition and give to a Federal Government *which had demonstrated its utter inability* to solve or effectively deal with the problem and menace of Communism, the sole and exclusive right and

power to defend our State and Country from the traitors within our ranks. If that had been the Congressional intent, we ask once again, isn't it unbelievable that Congress did not clearly and expressly and specifically say so [fol. 120] in the Smith Act? The majority opinion fails to answer this question for the obvious reason that it cannot. But members of Congress and the Attorney General of the United States are not so reticent. The author of the Smith Act—the highly respected and distinguished Congressman, Howard W. Smith, of Virginia, vigorously denies and refutes the majority's theory of supersession. His letter is so clear, pertinent and devastating that we quote the material part at length:*

"Howard W. Smith,
8th District, Virginia.

Committee on Rules.

Calvin H. Haley,
Secretary.

Congress of the United States
House of Representatives
Washington, D. C.

February 4, 1954.

Honorable Frank Truscott,
Attorney General of Pennsylvania,
Department of Justice,
Harrisburg, Pennsylvania.

Dear Mr. Attorney General:

"As I am the author of the Federal act in question, known as the Smith Act, I am deeply disturbed by the implications of this decision. May I say that when I read this opinion, it was the first intimation I have ever had, either in the preparation of the act, in the hearings before the Judiciary Committee, in the debates in the

* This letter is part of the record in this case. It was submitted by the Attorney General of Pennsylvania (who protested the majority decision) as one of his reasons or grounds for a reargument of this case.

House, or in any subsequent development, that Congress ever had the faintest notion of nullifying the concurrent jurisdiction of the respective sovereign states to pursue also their own prosecutions for subversive activities. It would be a severe handicap to the successful stamping out of subversive activities if no state authority were permitted to assist in the elimination of this evil, or to protect its own sovereignty. The whole tenor and purpose of the Smith Act was to eliminate subversive activities, and not assist them, which latter might well be the effect of the decision in the Commonwealth v. Nelson case.

[fol. 121] "I hope you will not think me presumptuous in taking this matter up with you, but you can readily understand how deeply disturbed I am about. . . .

Sincerely yours, Howard W. Smith."

In the "Brief for the United States" filed by the Attorney General in the case of *Dennis v. United States*, 341 U. S. supra (1951), the Attorney General devoted many pages to sustain his contention that the Smith Act was Constitutional because it was a part of a large mass of valid *State* and Federal legislation which punished sedition and subversive activities. He said, inter alia: "3. The other American statutes dealing with political extremism. It is significant to note that the Smith Act is part of a large body of legislation, both State and Federal, directed against political extremism. . . . a) State legislation. All or nearly all of the States have enacted legislation dealing with political extremism. This legislation takes a variety of forms, depending partly upon the time and circumstances of enactment. Some of the statutes date from the Civil War, others are a response to the alleged menace of the I. W. W. and to the violent anarchism which resulted in the assassination of President McKinley. Many of the state statutes date from 1917 and the Russian Revolution. However, since 1940, there has been enacted a considerable number of state statutes dealing either by name or by clear implication with Communism and Fascism. In the interest of brevity, we will not attempt to describe here this mass of state legislation.

"However, the more recently enacted state statutes reveal the evils anticipated by the American state legislatures from Communism and Fascism. Thus, in 1945, Illinois provided . . .

"This mass of State and Federal legislation reflects the Nation's awareness of the fact that the danger to free countries is not from direct and domestic insurrectionary movements but from the more subtle alliance of domestic [fol. 122] political groups with foreign governments with whose ideology they are sympathetic and whose policies they serve."

In the light of that letter from Congressman and former Judge Howard W. Smith and in the face of the brief of the Attorney General of the United States in the Dennis case, how is it possible for this Court to say that Congress "intended" to supersede and nullify State laws punishing Sedition?

If any possible doubt could possibly remain, it would be forever dissipated by the fact that the Federal Code of Crimes and Criminal Procedure of 1948, of which the Smith Act is now a codified part, expressly states in § 3231: "Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof."

Although no further confirmation is needed, we shall multiply the overwhelming proof and point out that the authorities further confirm the validity and constitutionality of the State Sedition Act.

Gilbert v. Minnesota, 254 U. S. 325, is analogous to and *in principle* controls the instant case. In that case a statute of Minnesota made it unlawful to discourage the enlist- [fol. 123] ment of men in the military or naval forces of the United States or of the State of Minnesota, and by another section unlawful for any person to teach or advocate that the citizens of Minnesota should not assist the United States in carrying on war with its public enemies. The statute was sustained as an exercise of the police power and also as a legitimate measure of cooperation by the State with the United States. It was held not to be in conflict with the federal war power nor with the Constitutional right of free speech. It was argued that Congress had the exclusive power to declare war and to determine among other things

the conditions of enlistment; and consequently, just as here, it was contended the states had no such power, especially as their acts might run counter to what Congress or the army or navy might consider the wisest and most effective means of securing support from all the citizens. The *minority* opinion in that case held, as does the *majority* opinion in this case, that the state statute was inconsistent with the law of the United States and a cause of real embarrassment and danger to the Federal Government and consequently unconstitutional. All of these arguments or contentions were rejected by the majority which in its opinion said (page 328): "Undoubtedly, the United States can declare war and it, not the States, has the power to raise and maintain armies. But there are other considerations. The United States is composed of the States, the States are constituted of the citizens of the United States, who also are citizens of the States, and it is from these citizens that armies are raised and wars waged, and whether to victory and its benefits, or to defeat and its calamities, the States as well as the United States are intimately concerned. . . . *from the contention that it encroaches upon or usurps any power of Congress, there is an instinctive and immediate revolt.* Cold and technical reasoning in its minute consideration may indeed insist on a separation of the sovereignties and resistance in each to any cooperation from the other, but there is opposing demonstration in the fact that this country is one composed of many and must on occa- [fol. 124] sions be animated "as one and that *the constituted and constituting sovereignties must have power of cooperation against the enemies of all.* . . ." The same view of the statute was expressed in State v. Holm, 139 Minnesota, 267, where, after a full discussion, the contention was rejected that the Espionage Law of June 15, 1917, abrogated or superseded the statute, the court declaring that the fact that the citizens of the State are also citizens of the United States and owe a duty to the Nation, does not absolve them from duty to the State *or preclude a State from enforcing such duty. 'The same act,'* it was said, *'may be an offense or transgression of the laws of both' Nation and State, and both may punish it without a conflict of their sovereignties.* Numerous cases were cited commencing with

Moore v. Illinois, 14 How. 13, and terminating with Halter v. Nebraska, 205 U. S. 34.

"The latter case is especially pertinent in its sentiment and reasoning. It sustained a statute of Nebraska directed against the debasement of the National flag to trade uses against the contention that the flag being the National emblem was subject only to the control of the National power. In sustaining the statute it was recognized that in a degradation of the flag there is a degradation of all of which it is the symbol, that is, 'the National power and National honor' and what they represent and have in trust. To maintain and reverence these, to 'encourage patriotism and love of country among its people,' may be affirmed, it was said, to be a duty that rests upon each State, and that 'when, by its legislation, the State encourages a feeling of patriotism towards the Nation, it necessarily encourages a like feeling towards the State.'

"And so with the statute of Minnesota. An army is an instrument of government, a necessity of its power and honor, and it may be, of its security. An army, of course, can only be raised and directed by Congress, in neither has the State power, but it has power to regulate the conduct [fol. 125] of its citizens and to restrain the exertion of baleful influences against the promptings of patriotic duty to the detriment of the welfare of the Nation and State. To do so is not to usurp a National power, it is only to render a service to its people, as Nebraska rendered a service to its people when it inhibited the debasement of the flag.

"We concur, therefore, in the final conclusion of the court, that *the State is not inhibited from making 'the national purposes its own purposes'* to the extent of exerting its police power to prevent its own citizens from obstructing the accomplishment of such purposes.'

"'The statute, indeed, may be supported as a simple exertion of the police power to preserve the peace of the State. . . . 'It is simply a local police measure, aimed to suppress a species of seditious speech which the legislature of the State has found objectionable.'"

It is apparent that there is far less justification in the instant case for the majority theory of supersession than there was for the minority view in *Gilbert v. Minnesota*. All

of Nelson's arguments in this case and all of the theories of the majority were, we repeat, rejected by the Supreme Court in *Gilbert v. Minnesota*. Moreover, the Supreme Court cited with approval the *Holm* case, supra, which sustained a state statute dealing with Espionage and rejected the contention that the Espionage Law of 1917 abrogated or superseded a state statute, and specifically held that the citizens of each state owe a duty to the state as well as to the nation and that nothing precluded a state from enforcing such duty since our sovereign federal government needed the cooperation of its constituent sovereignties against the enemy of all. Moreover, as the Supreme Court there said, the same act may be an offense or transgression of the laws of both the nation and the state and both may punish it without a conflict of their sovereignties.

[fol. 126] It is to be noted that the state statute in the *Gilbert* case was sustained both as a legitimate measure of cooperation by the state with the United States and as an exercise of the police power to preserve the peace of the State. These two grounds are present here with even greater cogency than there.

The majority opinion has signally failed to distinguish the *Gilbert-Minnesota* case or the famous *Gitlow* case or the *Whitney* or *Fox* or *Holm* or *Halter* cases.

Gitlow v. New York, 268 U. S. 652 is both analogous and in principle controlling. In 1909 the State of New York passed an Act *which prohibited the advocacy or teaching the necessity of overthrowing organized government by force or violence*. Benjamin Gitlow, noted communist, was indicted and convicted under this statute and given a five to ten year sentence. He appealed to the Supreme Court of the United States contending that the statute under which he was convicted violated the freedom of speech and press guaranteed by the First and Fourteenth Amendments to the United States Constitution. The decision of the Supreme Court, affirming the conviction, has become famous as the Gitlow case (*Gitlow v. New York*, 268 U. S. 652). The Supreme Court said: "That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question." Robertson v. Baldwin, supra, p.

281; Patterson v. Colorado, supra, p. 462; Fox v. Washington, supra, p. 277; Gilbert v. Minnesota, supra, p. 332; People v. Most, 171 N. Y. 423, 431; State v. Holm, 139 Minn. 267, 275; State v. Hennessy, 114 Wash. 351, 359; State v. Boyd, 86 N. J. L. 75, 79; State v. McKee, 73 Conn. 18, 27. Thus it was held by this Court in the Fox Case that a State may punish publications advocating and encouraging a breach of its criminal laws; and, in the Gilbert Case, that a State may punish utterances teaching or advocating that its citizens should not assist the United States in prosecuting or carrying on war with its public enemies.

[fol. 127] "And, for yet more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. . . . By enacting the present statute the State has determined, through its legislative body, that utterances advocating the overthrow of government by force, violence and unlawful means, are so inimical to the general welfare and involve such danger of substantive evil that they may be penalized in the exercise of its police power."

Another analogous case is *Whitney v. California*, 274 U. S. 357. That case sustained a conviction under the California Criminal Syndicalism Act, which like the New York statute in the *Gitlow* case, specifically prohibited advocating or teaching or aiding an organization to advocate certain criminal acts, to effect any political change by force, violence or terrorism. The Court said (page 371): "That the freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom; and *that a state in the exercise of its police power* may punish those who abuse this freedom by utterances inimical to the public welfare, tending to incite to crime, disturb the public peace, *or endanger the foundations of organized government* and threaten its overthrow by unlawful means, *is not open to question.*"

Cases in other analogous fields likewise demonstrate how

untenable the majority opinion is. A leading case is *Fox v. Ohio*, 46 U. S. 410. The defendant in that case was indicted, convicted and sentenced under an Ohio statute for passing "a certain piece of false, base, counterfeit coin, forged and counterfeited to the likeness and similitude of the good and legal silver coin, currently passing in the State of Ohio, called a dollar."

There is no field or activity in our country in which the federal government has a more *exclusive monopoly* than [fol. 128] that which has to do with the monetary system of the United States. Article I, § 8 of the Constitution of the United States gives Congress power to "coin money, regulate the value thereof . . . and to provide for the punishment of counterfeiting the Securities and current Coin of the United States." The states have no such power under the Constitution or under any Act of Congress.

Nevertheless, the defendant's conviction was affirmed by the Supreme Court of the United States, which held that the crime punishable under the Ohio statute "*is deemed by this court to be clearly within the rightful power and jurisdiction of the State.* So far, then, neither the statute in question, nor the conviction and sentence founded upon it, can be held as violating either the constitution or any law of the United States made in pursuance thereof." Could anything be more analogous or decisive? The same arguments made here by defendant Nelson and sustained by a majority of this Court were there made and rejected by the Supreme Court of the United States. For example, Fox argued that since the State Government and the Federal Government had legislated on the same subject, "*an individual* under these separate jurisdictions *might be liable to be twice punished for the one and the same crime*, and that this would be in violation of the fifth article of the amendments to the constitution, declaring that no person shall be subject for the same offense to be twice put in jeopardy of life or limb." In answer to this argument the Court said: "The prohibition alluded to as contained in the amendments to the constitution, as well as others with which it is associated in those articles, were *not designed as limits upon the State governments* in reference to their own citizens. They are exclusively restrictions upon federal power, "intended

[fol. 129] to prevent interference with the rights of the States, and of their citizens."

The language of the Attorney General of Ohio is equally applicable to the instant case which differs only in its greater magnitude and importance. Such a jurisdiction, if not indispensable is to the last degree useful and expedient. And it has been exercised almost, if not quite, universally by the different States which compose the Union. The rightfulness of this jurisdiction is now, for the first time, questioned in this Court. Certainly it presents a question of the first magnitude, for *no one can foresee what may be the consequence of taking from the States the power of self-protection, which they have so long exercised against a class of criminals swarming over the entire Union, and against a species of crime which, more than any other, affects the common business of the people.*"

Powerful as is our Federal Government, extensive as are its departments and ramifications, wonderful as is the FBI, there are still not nearly enough FBI agents, United States district attorneys, marshals and agencies to cope with this far-flung masked threat against the very life of our American System of Government.

Cases in other fields over which Congress is generally considered to have exclusive jurisdiction further demonstrate the error of the majority opinion. For example, Congress is given by Article I, § 8, Clause 3 of the Constitution of the United States the power to regulate interstate commerce. This power Congress has exercised in numerous acts. Nevertheless, it is now well settled that a state can regulate as well as tax interstate commerce for limited purposes, such as local activities or for the use of its highways or local facilities: *Interstate Bus Corp. v. Blodgett*, 276 U.S. 245; *Dixie Ohio Express Co. v. State Revenue Comm.*, 306 U.S. 72; *Clark v. Gray, Inc.*, 306 U.S. 583; [fol. 130] *Hendrick v. Maryland*, 235 U.S. 610; *Capitol Greyhound Lines v. Brice*, 339 U.S. 542; *Aero Transit Co. v. Commissioners*, 332 U.S. 495; *Shirks Motor Express Corp. v. Messner*, 375 Pa. —, — A. 2d —; *Keystone Motor Co. v. Pittsburgh*, 374 Pa. 323, 97 A. 2d 797; *Southern Pacific Co. v. Gallagher*, 306 U.S. 167, 176; *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33, 58; *Western*

Live Stock v. Bureau of Revenue, 303 U.S. 250; *International Harvester Co. v. Department of Treasury*, 322 U.S. 340; *Norton Company v. Department of Revenue of Illinois*, 340 U.S. 534; *Missouri Pacific Ry. Co. v. Larabee Mills*, 211 U.S. 612.

Congress has assumed what many believe was complete and therefore exclusive jurisdiction in the labor-management field under the Acts popularly known as the Wagner Act and the Taft-Hartley Act. The question has frequently arisen whether Congress by such Acts clearly manifested an intention to supersede all state police power in this field. This question has been resolved by the Supreme Court in favor of the States in many cases where the State statute was sustained: *Hughes v. Superior Court of California*, 339 U.S. 460; *Bakers & Pastry Drivers v. Wohl*, 315 U.S. 769; *Dorchy v. Kansas*, 272 U.S. 306; *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287; *Hotel & Restaurant Employees International Alliance, etc. v. Wisconsin E. R. Bd.*, 315 U.S. 437; *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U.S. 722; *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490; *Worster Mills v. Textile Workers Union*, 369 Pa. 339, 85 A. 2d 851.

All of these analogous cases demonstrate that the police power of a state, especially where it attempts to protect the very life and existence of our State and Federal Governments, must be sustained unless restricted or prohibited by the Constitution, or clearly, expressly and validly prohibited by Congress, or unless Congress has clearly and validly manifested an intention to exclude the States from exercising their police power on the matter in question. [fol. 131] The only decision cited by the majority which, in my judgment, might be said to even remotely support its application of the supersession doctrine is *Hines v. Davidowitz*, 312 U.S. 52. Congress had passed the Federal Alien Registration Act of 1940 which, together with the Immigration and Naturalization Laws, constituted, as the Court pointed out, a comprehensive and integrated plan for the regulation of all aliens (14 years of age and over) and precluded the enforcement of State Alien Registration Acts. The Court said, inter alia, (page 63): "The Federal Government, representing as it does the collective inter-

ists of the forty-eight states, is entrusted with full and *exclusive responsibility for the conduct of affairs with foreign sovereignties*. . . . Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that *federal power in the field affecting foreign relations* be left entirely free from local interference."

A reading of the majority opinion makes it clear that the basis for the decision was the Court's conviction that a State Alien Registration Act would likely involve us in grave international controversies and might even lead to war. No such result could possibly ensue from State treason or Sedition laws; and the case is clearly distinguishable on its facts.

[fol. 132] If there were any doubt on this issue, and in my judgment there is none, it would be resolved by the recent decision of the Supreme Court of the United States in *Dennis v. U.S.*, 341 U.S. 494, (1951). In that case Dennis and others were convicted of conspiring to organize a Communist party to teach and advocate the overthrow of the government of the United States by force and violence. The Court sustained the constitutionality of the Smith Act and held that it did not violate the First or Fifth Amendments or any other provision of the Bill of Rights. In the course of its opinions, *Gitlow v. New York*, 268 U.S., supra, and *Whitney v. California*, 274 U.S., supra, were cited or discussed with approval (pages 505, 506, 536, 537).

If the contentions of the defendant, Nelson, which the majority of this Court adopts were legally sound, isn't it reasonable to assume that the Supreme Court of the United States would have pointed out that the New York statute, which was the model for and almost identical with the Smith Act, (as well as with the California Syndicalism Act), had been superseded and suspended or invalidated by the Smith Act, instead of quoting and discussing these cases with approval?

The majority seeks to support its application of the doctrine of "supersession" by stating that "The old saying, that 'self-preservation is the first law of nature' is as true of nations as it is of animal life"; and then goes on to illogically, impractically and unjustifiably deny the first law

of nature to a Sovereign State. It seems inconceivable to me that anyone would deny to a Sovereign State the right of self-preservation, or even deny its right (except where Constitutionally limited or prohibited) to help preserve the Government of the United States, of which each State is a basic component, constituent, indispensable part. [fol. 133]. It seems necessary to recall and to frequently reiterate that a State has an inalienable right and an inescapable duty to protect the life, liberty and property of its citizens, and in their behalf to preserve its own existence and the existence of our National Government: *Thornhill v. Alabama*, 310 U.S. 88, 105; *Carlson v. California*, 310 U.S. 106, 113; *Worley v. Textile Workers*, 369 Pa. 359, 85 A. 2d 851.

II. Double Jeopardy

In addition to the principle of "preemption and supersession by implication", the majority advance a second reason to support their position, namely, Pennsylvania's Act must be suspended or invalidated because otherwise Nelson would be subjected to double jeopardy, i.e., he might be convicted in every State where he plotted the overthrow of our Country or of the Government of that particular State. We may appropriately ask why shouldn't he be convicted and punished in every State and in every County where he commits a separate crime? If there is any principle well settled in criminal law it is that a person may be indicted, tried, convicted and sentenced for every separate criminal offense he commits in that County! See: *United States v. Lanza*, 260 U.S. 377; *McKelvey v. United States*, 260 U.S. 353; *Com. v. McCusker*, 363 Pa. 450, 458, 70 A. 2d 273; *Com. v. Valotta*, 279 Pa. 84, 88, 123 A. 681; *Albrecht v. United States*, 273 U.S. 1; *Com. ex rel. Garland v. Ashe*, 344 Pa. 407, 408, 26 A. 2d 190.

The error of the majority's position on the subject of double jeopardy is made more conspicuous by its failure to cite any authority to support it. The reason for the omission is obvious—the authorities hold exactly to the contrary.

The fact that the same or similar criminal or traitorous offenses are prohibited by a State Act as well as by an Act of Congress does not violate any provision of the Consti-

tution of the United States or of the Commonwealth of Pennsylvania or constitute double jeopardy, since a person by the same act can commit two distinct criminal offenses, one against the United States and one against the State, [fol. 134] and may be subjected to prosecution and punishment in the Federal Courts for the one and in the State Courts for the other: *United States v. Lanza*, 260 U.S. 377, 381-384; *Barron v. Baltimore*, 7 Peters 243; *Fox v. Ohio*, 46 U.S. 410; *United States v. Marigold*, 50 U.S. 560, 569; *Moore v. Illinois*, 55 U.S. 13, 19, 20; *United States v. Cruikshank*, 92 U.S. 542, 550; *Ex parte Siebold*, 100 U.S. 371, 390; *Cross v. North Carolina*, 132 U.S. 131, 139; *Pettibone v. United States*, 148 U.S. 197, 209; *Crossley v. California*, 168 U.S. 640; *Southern Railway Co. v. R.R. Commission of Indiana*, 236 U.S. 439, 445; *Gilbert v. Minnesota*, 254 U.S. 325, 330; *McKelvey v. United States*, 260 U.S. 353, 358, 359; *Hebert v. Louisiana*, 272 U.S. 12; *Sexton v. California*, 189 U.S. 319; *Westfall v. United States*, 274 U.S. 256; *Com. ex rel. Garland v. Ashe*, 344 Pa., supra.

In *Gilbert v. Minnesota*, 254 U.S. 325, 330, the Court said: "'the same act,' . . . 'may be an offense or transgression of the laws of both' Nation and State, and both may punish it without a conflict of their sovereignties."

In *United States v. Lanza*, 260 U.S. 377, the defendants were charged in both the Federal Court and in the county Court of Washington with manufacturing and possessing intoxicating liquor. Defendants contended that punishment under separate Federal and State indictments for these same offenses subjected them to double jeopardy since both the National Government and the State were each punishing them for the same act. This contention was rejected by the Supreme Court of the United States. The Court held that the United States derived its power to punish the crime by virtue of the Eighteenth Amendment, whereas the States, although given concurrent power to punish the crime by the Amendment, possessed such power prior thereto by virtue of its police power. The Court then said:

[fol. 135] "To regard the Amendment as the source of the power of the States to adopt and enforce prohibition measures is to take a partial and erroneous view of the

matter. Save for some restrictions arising out of the Federal Constitution, chiefly the commerce clause, each State possessed that power in full measure prior to the Amendment, and the probable purpose of declaring a concurrent power to be in the States was to negative any possible inference that in vesting the National Government with the power of country-wide prohibition, state power would be excluded. . . .

"We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject-matter within the same territory. Each may, without interference by the other, enact laws to secure prohibition. . . . Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other.

"It follows that *an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.* The Fifth Amendment, like all the other guaranties in the first eight amendments, applies only to proceedings by the Federal Government, *Barron* v. *Baltimore*, 7 Pet. 243, and *the double jeopardy therein forbidden is a second prosecution under authority of the Federal Government after a first trial for the same offense under the same authority.* Here the same act was an offense against the State of Washington, because a violation of its law, and also an offense against the United States under the National Prohibition Act. The defendants thus committed two different offenses by the same act, and a conviction by a court of Washington of the offense against that State is not a conviction of the different offense against the United States and so is not double jeopardy.

[fol. 136] "This view of the Fifth Amendment is supported by a long line of decisions by this Court. In *Fox* v. *Ohio*, 5 How. 410, a judgment of the Supreme Court of Ohio was under review. It affirmed a conviction under a state law punishing the uttering of a false United States silver dollar. The law was attacked as beyond the power of the State. One ground urged was that, as the coinage of the dollar was entrusted by the Constitution to Congress, it had authority to protect it against false coins by pro-

hibiting not only the act of making them but also the act of uttering them. It was contended that if the State could denounce the uttering, there would be concurrent jurisdiction in the United States and the State, a conviction in the state court would be a bar to prosecution in a federal court, and thus a State might confuse or embarrass the Federal Government in the exercise of its power to protect its lawful coinage. . . . [The Court rejected this contention and further said, page 383]:

". . . in *United States* v. *Marigold*, 9 How. 560, 569, the same Justice said that 'the same act might, as to its character and tendencies, and the consequences it involved, constitute an offence against both the State and Federal Governments, and might draw to its commission the penalties denounced by either, as appropriate to its character in reference to each.'

"The principle was reaffirmed in *Moore* v. *Illinois*, 14 How. 13; in *United States* v. *Cruikshank*, 92 U.S. 542, 550, 551; in *Ex parte Siebold*, 100 U.S. 371, 389, 390, 391; in *Cross* v. *North Carolina*, 132 U.S. 131, 139; in *Pettibone* v. *United States*, 148 U.S. 197, 209; in *Crossley* v. *California*, 168 U.S. 640, 641; in *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U.S. 439; in *Gilbert* v. *Minnesota*, 254 U.S. 325, 330; and, finally, in *McKelvey* v. *United States*, [260 U.S.] 353.

"In *Southern Ry. Co.* v. *Railroad Commission of Indiana*, *supra*, Mr. Justice Lamar used this language (p. 425):—

[Vol. 137] "'In support of this position numerous cases are cited which, like *Cross* v. *North Carolina*, 132 U.S. 131, hold that *the same act may constitute a criminal offense against two sovereignties, and that punishment by one does not prevent punishment by the other.* That doctrine is thoroughly established. . . .'"

In *McKelvey* v. *United States*, 260 U.S. 353, 358, the Court said: "The following excerpt from *Moore* v. *Illinois*, 14 How. 13, 20, is pertinent:

"'The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offence against the United States, for which the perpetrator is liable to punishment; and the

same act may be also a gross breach of the peace of the State, a riot, assault, or a murder, and subject the same person to a punishment, under the State laws, for a misdemeanor or felony. That either or both may (if they see fit) punish such an offender, cannot be doubted. Yet it cannot be truly averred that the offender has been twice punished for the same offence; but only that *by one act he has committed two offences, for each of which he is justly punishable.*'"

Another analogous case is *Sexton* v. *California*, 189 U.S. 319. In that case the Revised Statutes of the United States provided that a person who received money as a consideration for not informing against any violation of any internal revenue law should, on conviction, be punished by a fine not exceeding $2000, or by imprisonment not exceeding one year, or both; and gave exclusive jurisdiction of such offenses to the Courts of the United States. Defendant was indicted, convicted and sentenced in a State Court for extorting money by threatening to accuse Greenwald of an offense under the Federal Statute. The conviction was sustained by the Supreme Court of the United States because the defendant was charged with and punished for the violation of the State crime of extortion.

[Fol. 138] In *Com. ex rel. Garland* v. *Ashe*, 344 Pa., *supra*, the Supreme Court of Pennsylvania said (page 408): "The relator's petition must be dismissed. The Fifth Amendment to the Federal Constitution which declares that no person shall for the same offense be twice put in jeopardy of life or limb is a restriction only on the power of the Federal Government: *Hurtado* v. *California*, 110 U.S. 516, 534. The tenth section of the Pennsylvania Bill of Rights also contains a prohibition against a person being 'twice put in jeopardy of life or limb' and is a restriction on the power of the state government. But the same act *denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.* The double jeopardy therein forbidden [i.e., in the Fifth Amendment] is a second prosecution under authority of the Federal Government after a

first trial for the same offense under the same authority." *United States v. Lanza*, 260 U.S. 377, 382."

The foregoing authorities completely demolish Nelson's contention and the majority opinion's theory of double jeopardy.

For each and every one of the foregoing reasons, I dissent from the decision of this Court."

fols. 139-161] leaders in the era prior to the passage of the revised Smith Act in 1948, make it an imperative necessity to sustain State Sedition Laws which allow the State

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* The majority, in an attempt to buttress this part of their opinion, *improperly* state, based upon newspaper reports, that Nelson, subsequent to his conviction in a State Court in the instant case, was convicted of this same offense in a District Court of the United States and was sentenced to 5 years' imprisonment; and that "the acts proven in the Federal Court to effectuate the alleged conspiracy [to violate the Smith Act] consisted of practically the same matter as was offered against Nelson in the trial in the State Court." *None of this was a part of the Record* in the instant case. There is no evidence in this Record that Nelson was subsequently tried and convicted in a Court of the United States, nor is there any evidence herein of the crime or crimes of which Nelson was charged and convicted in the United States Court; nor do we know whether the evidence was the same in both cases or whether the crimes charged were based upon the same acts. The majority omit to mention that the newspapers state that Nelson has appealed from the Federal conviction. However, the majority's reliance upon newspaper reports is, in my judgment, of no moment, since in no event could it constitute double jeopardy.

** It will not escape notice that except for four of the Judges of this Court, all of the Judges of Pennsylvania who have considered the constitutional question here involved, including the Superior Court, are in accord that Pennsylvania's Act has *not* been superseded or invalidated by the Smith Act.

to ferret out, prosecute and punish the Communists who are stealing our vital secrets and plotting our destruction.

For each and every one of the foregoing reasons, I dissent from the decision of the Court. It will not escape notice that, except for four of the Judges of this Court, all of the Judges of Pennsylvania who have considered the constitutional question here involved, including the Superior Court are in accord that Pennsylvania's Act has *not* been superseded or invalidated by the Smith Act.

[fols. 162-170] Omitted. Printed side page 6 ante.

[fols. 171-196] Omitted. Printed side page 49, ante.

[fols. 197-272] Omitted. Printed side page 91, ante.

[fol. 1] In the Court of Quarter Sessions of Allegheny County, Pennsylvania

No. 764 October Sessions, 1950

(Sedition)

Commonwealth of Pennsylvania

vs.

Steve Nelson alias Louis Evans alias Joseph Fleischinger alias "Hugo", alias Steve Mesarosh

Pittsburgh, Pennsylvania
Tuesday, December 4, 1951

Coram: Hon. Harry M. Montgomery, J.

Transcript of Official Notes of Proceedings

Counsel Present:

For the Commonwealth: William F. Cercone, Esq., Lorian L. Lewis, Esq., Assistant District Attorneys.

For the Defendant: Harry I. Glick, Esq., Amicus curiae.
Frank Shonsky, Official Court Reporter.

[fol. 2] Tuesday, December 4, 1951,
Pittsburgh, Pennsylvania

The Court: We are calling for trial the case of Commonwealth of Pennsylvania vs. Steve Nelson, alias Louis Evans, alias Joseph Fleischinger, alias "Hugo", alias Steve Mesarosh. Is the Commonwealth ready to proceed?

Mr. Cercone: The Commonwealth is ready to proceed, Your Honor.

The Court: Mr. Nelson, are you ready to proceed?

Mr. Nelson: No, Your Honor.

The Court: Mr. Glick, I recognize you as sitting on the side of the counsel table with Mr. Nelson: do you represent him?

Mr. Glick: No, sir. I wish to present a motion, however, as amicus curiae, on behalf of this defendant. I have not

been engaged by Mr. Nelson as his lawyer. However, since this morning when the case was called to my atten-
[fol. 3] tion and I was requested to participate in it on behalf of the defendant I learned this: That because of the seriousness of the offense and because of the length of the trial, and because of the questions of law involved, it would become necessary to devote a great deal of time to study and research with reference to the questions involved. If I were to participate in the trial of this case as counsel for the defendant and in order that the defendant might have a fair and impartial adjudication of his cause, it would be essential that the case be postponed for at least thirty days. And unless such postponement is made, I would feel that I would be incapable of rendering the services necessary for the proper trial of the case.

Mr. Nelson would like to address the Court, if Your Honor please.

The Court: Very well, Mr. Nelson.

MOTION FOR POSTPONEMENT AND DENIAL THEREOF

Mr. Nelson: Your Honor, I met with these attorneys that were suggested to me by yourself, with five of them so far,
[fol. 4] and I had to meet with them sort of under a great deal of pressure and had very little time to acquaint them with the case. And those who appeared to me to be serious about the case indicated that it would take some time to prepare—as Mr. Glick did just now. Frankly, you can't blame me for being suspicious when an attorney comes and says, "Yes, I'm ready to go to trial tomorrow morning." One such attorney—I will not mention any names—but he stated to me, "Yes, I'm ready." I asked him, "Have you read the indictment?" He says, "No." "Do you know when the law was passed? What is the law under which I am being indicted?" He says, "I believe it was passed some time in 1940." I said it was passed in Thirty nine. I says, "Do you know of any cases that were tried under this law" And he says, "No, I don't." "Well," I says, "do you know anything about the last trial; have you followed it?" "Oh," he said, "in a general sort of a way." Well I consider that kind of an answer to be and indicates to me that the man like that couldn't represent me. In

[fol. 5] other words, there are two categories of men that I have spoken to: Some who said that if I agreed with them but they would agree with me that they'd have to have time; and the others are willing to go, apparently, who are ready and a part of this business of getting this thing over with in a hurry. And in addition to which they want me to buy the rope with which to hang me. I am not going to pay for the rope that is going to hang me, especially since I am being framed, Your Honor. I committed no crime. And in that respect——

The Court: Well, we are not hearing you now on the merits of the matter at this time; we are hearing you only on the matter of delay——

Mr. Nelson: Yes.

The Court: For the purpose of getting counsel.

Mr. Nelson: Now, Your Honor, I told you that I did the best I could do to make arrangements with Mr. Medalie, who was willing to come in in thirty days or so after he [fol. 6] had a chance to prepare. That was pratically what Mr. Glick said here too. Now if you compel me to go to trial without giving these gentlemen, whoever they will be, a chance to prepare, I will consider this unfair to me and a violation of my rights of having counsel of my own choice and giving counsel time to prepare to defend me in the way I should be defended. Consequently, Your Honor, I am not prepared to go, for that reason, go to trial any time before these men agree and say that this would be agreeable to them, whichever one it is going to be ultimately. I feel very disturbed about the fact that the Court apparently is rushing this trial. If the Court cares, I have here with me letters that I wrote to attorneys, individual letters, and I will give names of attorneys with whom I discussed — some forty-odd attorneys have been spoken to. And I already indicated in my affidavit why most of them didn't want to come into the case, although some would at a different time if that was convenient. Consequently, Your [fol. 7] Honor, I would renew my motion before you, either that I be given time to consult with attorneys, and with others who have indicated willingness to go into the case, and that they be given a reasonable time to prepare before the trial goes ahead.

The Court: Now you have been given a reasonable time. Two months ago you filed a motion with me to postpone at that time the trial of this case. It was listed in the early part of October, you came to me with an application for postponement. You had previously been before Judge Kennedy—and we postponed it for two months due to your condition of health. At that time you further asked permission to go to New York, Reading, Philadelphia, to secure counsel. I advised you then that you would have that privilege, you would have the permission of the Court to do so, but that would not be accepted as an excuse for further postponement—I mean the inability to get counsel would not be accepted as an additional reason for further postponements—and I meant what I said then. Since then [fol. 8] this case was listed on Monday of this week; you appeared without counsel; you presented a petition asking me to appoint a panel of lawyers whom you might interview. Rather than grant your petition, which was a little unusual, I did personally undertake to find you lawyers who would be willing at the request of the Court to represent you. I found Mr. Martin, I found Mr. Doty, I found Mr. Blanchfield, I found Mr. Glick. Mr. Martin, of course, first consented to represent you but then pleaded that the extended nature of the trial prevented him from doing so, on account of his health. You consulted with the other three men I mentioned today, and it seems to me that I have given you every bit of cooperation that I could give to you to afford you the opportunity of having counsel. Now in addition to that I told Mr. Glick that this case was listed today and although I wouldn't entertain a motion for further postponement I would grant him the time from now until Monday the 10th, a matter of five days, to famil[fol. 9]iarize himself with the outline of your defense and the case of the Commonwealth. The only limitation on that was that I insisted that you proceed and select your jury this week so that we might be prepared on Monday to proceed without further delay. I think that is a reasonable demand on the part of the Court in view of all the past courtesies that have been afforded to you and the past considerations that have been afforded to you.

Mr. Nelson: Let me ask you a question, Your Honor.

The Court: Very well.

Mr. Nelson: Does the physical appointment of a man who is a lawyer constitute—that fact alone, does that constitute preparation for a trial of this kind?

The Court: I am not appointing anybody for you.

Mr. Nelson: I understand——

The Court: I only submitted names of members of the [fol. 10] Allegheny County Bar who are willing to serve you.

Mr. Nelson: Isn't it a necessary ingredient that the man who is going to conduct the defense also to be reading the record and the exhibits and such material as I call to his attention as important?

The Court: A certain amount of it, yes. But to grant him another indefinite postponement in order to read all of the literature that might be relevant here, to digest the entire record made at the case in which you were a party defendant sometime ago, no, I am not inclined to consider that a reasonable request.

Mr. Nelson: Well, Your Honor, I am not a lawyer but I consulted with many, as you can see and as I can prove, and some lawyers whom I consider capable, and I think you would consider them capable likewise, told me that if any lawyer is going to accept this case going to trial on short notice then he is not a lawyer, he actually is going to help to sell you down the river. Because this is a trial of [fol. 11] ideas and books and quotes have been introduced, they are in the indictment. Now, Your Honor, a whole five, six pages at the end of the indictment are quotes from books that have been introduced as evidence in this trial. Now I understand Your Honor suggests that the books as a whole will be given to the jury?

The Court: I don't know anything about the matter of the trial of this case at all. I know that many volumes were considered at the last trial but I don't know what they are.

Mr. Nelson: What I meant to say, Your Honor, I understood that you want to make this a speedy trial.

The Court: I have no purpose in making it any more speedy than the necessity of it requires. I certainly express to you now, and to counsel for the District Attorney's Office,

that I am not going to put up with any unnecessary delays.

Mr. Nelson: But at the same time—

[fol. 12] The Court: But you will be given a full opportunity to present your defense, as the Commonwealth will have to present their case against you, but I am not going to subject myself or this Court to any unnecessary horseplay or acting on the part of anybody concerned with this case. It is going to be tried as a lawsuit, a court case here in this courtroom, as any other lawsuit or court case is tried.

Mr. Nelson: This is not an ordinary case, Your Honor. I think that you have made that point at some stage of these proceedings—you have indicated that this is a different kind of a case.

The Court: I do not recall that I made much distinction. We have other serious cases here, serious homicides.

Mr. Nelson: This is not a homicide case and there is no crime involved; it is a matter of political opinions, Your Honor.

The Court: Well, that is one of the things that is sub-[fol. 13] ject to argument in the matter—I don't know, that is your position probably, and that is not the position of the Commonwealth. So it is one of the things that have to be decided during the course of the trial.

Mr. Nelson: What I want to say, Your Honor, these quotes have been introduced and if an attorney—

The Court: These what?

Mr. Nelson: These quotes in the indictment from these various books that have been submitted as evidence, some thirty-odd books. How is an attorney going to defend me if he doesn't know anything about those books, when the books are on trial? It is on point thirteen, Your Honor.

The Court: I am not going to afford any counsel that you may get an opportunity of reading a large number of books in preparation for this trial.

Mr. Nelson: Actually, my contention is that this is not a triable matter. In that respect I differ with Mr. Glick's [fol. 14] remark that this is a serious offense. I see no offense in it. I committed no crime.

The Court: If it isn't a crime you will be entitled to have a demurrer sustained to the evidence which is submitted, or the matter submitted to the jury. Now we cannot accept

your contention here as the basis for making decisions preliminarily. It is alleged that there is a crime committed. The matter of quashing the indictment has been considered in the past, I suppose. If the indictment is sustained by the evidence it probably constitutes a crime. You say that the evidence is not sufficient to sustain the indictment, that there is no crime committed. That is the matter that we have to try and the sooner we get to work trying it the sooner the matter will be disposed of.

Mr. Nelson: Well in that respect, Your Honor, I feel that I am being forced to go to trial without adequate preparation and it would be a violation of my constitutional rights, [fol. 15] and I would have to go to trial under protest. And Mr. Glick has let you know his opinion that he couldn't go before he prepares and I respect his opinions, and I don't think he asked for sufficient time to get acquainted because I found out that he hadn't read much of these books and he is not acquainted with them. And neither Mr. Doty, whom you suggested

The Court: We have noted here as a matter of record your objections to proceeding with the trial at this time, and you will be granted exceptions to the ruling of the Court overruling your motion for further postponement, so that your record is in shape if we are wrong in that respect. I again tell you that I cannot extend this matter beyond next Monday for the actual commencing of taking of testimony and I am compelled to ask you to proceed with the selection of jurors without further delay. Once the jury is selected I will not ask you to proceed with the taking of testimony until next Monday, which will afford Mr. Glick or anyone else that you select at least four or five days to familiarize [fol. 16] themselves with the general outline of your case. Of course, it is not time enough for him to read all the books and all the records that have been made, but in view of all the opportunity you have had in the past to obtain counsel I think that it is not unreasonable to ask you to proceed. So that your motion for further delay, except as I have indicated, is overruled and an exception noted.

It is three-ten now, and if you wish me to summon a panel of jurors to commence with the selection of a jury, for you now, I will do so; or I will delay that until tomorrow morning at nine-thirty. Is there any other preliminary

motions you wish me to hear and dispose of, you may present them now and I will be glad to dispose of them or hear your argument on them, or the argument of Mr. Glick, or anyone else.

COLLOQUY BETWEEN COURT AND DEFENDANT

Mr. Nelson: One more thing that I think ought to be on the record, Your Honor, it seems that you create the impression here in your statement now, and in previous statements, that I am stalling in this case.

[fol. 17] The Court: I have not intended to accuse you of deliberately stalling. The only thing I——

Mr. Nelson: The papers have made that into headlines.

The Court: Pardon?

Mr. Nelson: The papers have made that into headlines.

The Court: Whatever their interpretation may be, right or wrong, I am stating to you now that I am not accusing you of stalling or deliberately delaying this matter. I am saying that circumstances have caused it to be delayed too long now and you should proceed to trial without further delay, regardless of who is responsible for the delay to this point.

Mr. Nelson: Well, I want to finish my statement, Your Honor.

The Court: Very well.

Mr. Nelson: Let the record show that I was hurt in an accident; let the record show that as soon as I was released [fol. 18] from the hospital, two days later I was back in Pittsburgh, two days after I had been released by the doctor there.

The Court: I don't know that; that is subject to question. But I will grant you that I did receive the report of Doctor Wagner and Doctor Weinberg that you had been injured and that you were not able to proceed to trial the early part of October. That is the reason I granted you the extension to December the third.

Mr. Nelson: That is right.

The Court: Your return to Pittsburgh after the accident, I have no knowledge of that.

Mr. Nelson: That is right, I returned and reported here two or three days later after I returned. And let the record

show that during that time I have seen these attorneys, and because of the political character of this trial and the hysteria and atmosphere, that was the main reason why many good attorneys did not come into the case. And now, [fol. 19] Your Honor, you are urging that the trial go on with the few attorneys who are considering it now, without adequate preparation. I say that the burden cannot be put on me, that I have delayed the trial; that the reason the trial didn't take place was not because of the grace of this Court but because I was unable physically to go ahead.

The Court: That is true, you were unable to proceed.

Mr. Nelson: It is constantly thrown up to me by the prosecution——

The Court: That is the reason the delay was granted. I grant you that is a correct statement, but at the same time it is equally correct that my statement to you at that time, when I granted you permission to leave this jurisdiction, was that I would entertain no more applications on the basis of lack of counsel.

Mr. Nelson: Well is the Court then ordering me to go to trial without counsel?

[fol. 20] The Court: I am ordering you to proceed to trial with or without counsel. If you do not elect to accept one of the men that have been suggested to you, who have indicated their willingness to proceed with you, then select someone else. If you see fit not to select one of them, or anyone else, then I shall appoint counsel to sit by you and advise you of your rights, and you can conduct your own trial with them advising you as to where your legal rights lie if you are unfamiliar with what they may be.

Mr. Nelson: In that case I have to think this over, and the Court may do whatever you think—whatever you want to do, but I want to have my record protected.

The Court: You are having that done now.

Mr. Nelson: I object to this kind of procedure and the whole business about compelling me to meet with attorneys and in an hour or half an hour, in the corridor, and expect me to come back with an answer.

The Court: You had an opportunity——

[fol. 21] Mr. Nelson: I object to it.

The Court: You had an opportunity to talk to lawyer for two months, as far as I know, and Monday morning

when I knew you were still without counsel I did everything humanly possible in the last two days to find men at this bar who would be willing to defend you. I did that, I suggested names to you. That is as far as I can go with you Mr. Nelson. We shall proceed tomorrow morning with the selection of a jury in this case, if there are no preliminary motions to be filed in connection with it.

Mr. Nelson: Well, Your Honor, naturally, I have no counsel at this minute, but there are motions that I intend to file. I will have to consider whether I will have the motions presented by an attorney that the Court will appoint, but at this stage I cannot ask a decent attorney to come into this kind of a shotgun wedding and try to protect my rights.

The Court: That last remark is a little bit contemptuous [fol. 22] but I will overlook it at this stage of the proceedings, Mr. Nelson. I will grant you the additional courtesy since you are not advised by counsel this afternoon, of affording you an opportunity tomorrow morning to file any additional motions that you may have; but you will file them at nine-thirty and not one minute later, when this Court resumes.

(Court adjourns at 3:15 P.M. until tomorrow morning at 9:30 o'clock A.M.)

(Wednesday, December 5, 1951 Court convenes pursuant to recess of yesterday afternoon and the preliminary proceedings continues.)

Morning Session

The Court: All right, Mr. Nelson, do you have some motions?

Submission of Affidavit of Physical Condition of Defendant

Mr. Nelson: Your Honor, I have an affidavit pertaining to this matter of counsel. If you want—I couldn't type it, I didn't have the time but I wrote it out, and it is notarized—but if you want me to, I will make some com[fol. 23] ments on it now. I want to repeat——

The Court: Wait until I read it and see what it is; maybe comments will not be necessary then. You say Horace Meldahl has agreed or offered to defend you and is ready to come in about January 1st, is that correct?

Mr. Nelson: That is about right, yes.

The Court: "About January 1st", that is rather indefinite. Is he here in town?

Mr. Nelson: No, he is not, Your Honor. I was trying to contact him yesterday and I couldn't reach him. He was out of town—that is, he wasn't in Charleston. His family thought he was in Fairmont, and I couldn't connect with him.

The Court: And you have Aubry Grossman of New York?

Mr. Nelson: Yes, Your Honor. I have a telegram that I received. I have been in contact with this man for quite a while, but he had other urgent business and couldn't [fol. 24] come in immediately. And that telegram says that he would come in immediately but he would need sixty days to prepare the material for the trial.

The Court: Mr. Cercone and Mr. Lewis, you better look at this. This telegram as well. Do you have any other motions, Mr. Nelson, outside of this one, that you want to present?

Mr. Nelson: Yes, I have an oral motion I would like to present. I had no chance to prepare it.

The Court: Just a moment then.

Mr. Cercone: Your Honor please, after looking over this affidavit and this telegram we have come to the conclusion that Mr. Nelson just doesn't want to go to trial—doesn't want to go to trial today or next month or any time, if he can help it. Now we had this case set in September and, certainly, I think with all the available opportunity given to Mr. Nelson to go to New York and Philadelphia and elsewhere to retain counsel, he certainly must have spoken to this Mr. Grossman.

[fol. 25] The Court: I am not concerned too much about his engagement of counsel; the only thing that concerns me in this matter, Mr. Cercone, is whether or not this man is physically able to conduct his own trial. I told him yesterday he would go to trial today with or without counsel. At that time there was no mention made that he was phys-

ically incapable of trying his own case. Now we have had him examined by physicians in the past. Sixty days ago there was a postponement on the basis of a certificate of Doctor Wagner and Doctor Weinberg that at that time he was physically unable to proceed with the trial even with counsel. Now he raises the same question.

Mr. Cercone: Well I think he could get counsel if he really wanted to. And in the first place, in the first case Mr. McTernan was only retained two days—he came in here and told the Court he only had been retained two days and yet he was ready to go to trial. And that case lasted eight months. There's an attorney that only had two days' time.

[fol. 26] The Court: Let us assume he refuses to retain counsel and elects to try his own case: we are placed in this position of having a question raised as to his physical capacity to try his own case. He says in his affidavit that he has not the physical strength and the full control of his mental faculties, due to his accident, to proceed to try this case himself at this time.

Mr. Cercone: Well that part of it, of course, we don't know. We have to have the doctors tell us that.

The Court: That is the point that troubles me. Aside from the engagement of counsel, he says now he is physically and mentally unfit to proceed to try his own case. If I compel him to do so, in view of that, without an examination, it may be prejudicial to him, undoubtedly, if his statement is correct.

Mr. Cercone: Certainly we don't know a thing about the medical status of his health, but we do know that at the last trial he acted as his own attorney.

[fol. 27] The Court: Do you have any supporting evidence this morning, Mr. Nelson, as to your present condition and as you allege in your petition?

Mr. Nelson: Your Honor, I don't have that, but if you will recall Monday morning I put a petition in front of you——

The Court: Yes, asking to go to Philadelphia on Wednesday of this week.

Mr. Nelson: The reason was that I have no doctors in Pittsburgh at the moment.

The Court: Did you see Doctor Wennberg or Doctor Wagner since they examined you?

Mr. Nelson: No, I did not. And I didn't understand that to be the case, that I had to go back to them or that they would be willing——

The Court: They were only selected for the purpose of an examination.

Mr. Nelson: I asked them, since they can't treat me, to recommend a doctor; and in the course of the discus-[fol. 28] sion Doctor Eerderber was mentioned, that he is the man who follows through on these kinds of cases. And the day before I went to see him, he suffered from a serious injury, if you recall, and I did not have a chance to see him. And I have no other doctor in town, although I don't want this—I take exception to the remarks here that infer that I am trying to hide behind my physical condition.

The Court: That is the District Attorney's opinion. I told you yesterday that I did not accuse you of deliberately delaying this thing. I am not going to venture an opinion on it, the matter before us, whether or not you are physically able at this time to go ahead and try your own case.

Mr. Nelson: What my petition states, Your Honor, and its emphasis is on the fact that I was unable to do everything in my power to actually go to places and see people because of physical reasons as well as other difficulties put in my way. I indicated that not only was it hard for me to go to places and get around——

[fol. 29] The Court: Well you did get around, you got to those places nevertheless, and also you have been in Court a dozen times since I granted you the postponement. So you had some freedom of motion at any rate.

Mr. Nelson: That is despite the fact that I am able to get around; when I do, it is hard on me.

The Court: It may be with great effort on your part.

Mr. Cercone: This case was set for December 3rd, Your Honor, and the defendant has not come in with a medical excuse until this morning. Up until this time he has been arguing about not having counsel all the time, and now he comes in, three days after the scheduled date of the trial, and tells us that his physical condition isn't——

The Court: Well, the reason for that is that he has been relying on his assertion that he could not get counsel, and [fol. 30] then when the Court procured three men and they volunteered to serve him, why, he declined them for the reason, he said, that they would not have a chance to prepare his case properly and, therefore, he would not engage them.

Mr. Cercone: My point is that he didn't mention his physical condition Monday morning.

Mr. Nelson: Your Honor, that is what these men said themselves, not I. Mr. Glick is here; he made his own motion here.

The Court: Yes, I recognize that.

Mr. Nelson: He said he couldn't go ahead; and it wasn't I who said I couldn't go on.

Mr. Cercone: My only point is that you didn't say a thing about your physical condition on Monday or Tuesday. He said nothing about it until this morning. Why didn't he come in Monday and tell us about these things?

The Court: I think that the point involved is this: Is [fol. 31] he or is he not able to try his own case at this time?

Mr. Cercone: We don't know that.

Mr. Nelson: Your Honor, may I get this point straight here, please: My petition was written in a—rather, this affidavit was written in a hurry this morning. I had no time to go over it and get it in proper shape. It may be that it conveys the idea that I am pleading principally because—that is, not to go ahead because I am ill. It is not that. I put in there that I was badly incapacitated and I was unable to get around and see men in the past, and I was physically handicapped, Your Honor, to get counsel. My question is that I have no attorney this morning; I want that to be understood; and that physically I am not is shape to defend myself at this time.

The Court: That is the only point I am concerened with, because I think you have had ample opportunity to get counsel. You have been around to see them, and you had two months to do it under my previous order of postponement. [fol. 32] Monday when I learned that you did not

have counsel I did the best I could to get men to volunteer to—not volunteer, but to agree to serve you.

Mr. Nelson: Well, you know you give me very little time to see them. I saw Mr. Glick for fifteen minutes in the room—can you discuss with a man anything about this case if he came in at twelve o'clock and twelve-fifteen he walked out? Wasn't that right, Mr. Glick? Yesterday it was.

The Court: Well, he said you walked out on him, that he was to meet you in the hall and you left the court and didn't come back in the fifteen or twenty minutes he was waiting for you.

Mr. Cercone: Beside that he had two months to talk to attorneys.

Mr. Nelson: I called his office to try to locate him.

Mr. Glick: I was here waiting for you and you were out [fol. 33] some place. The reason you didn't get me in my office is because I was here waiting for you.

Mr. Nelson: Well I didn't understand it that way. I was here and saw the other man after you got through. Mr. Doty was out there. You left me.

The Court: I think I understand the proposition. Let me have the petition. We will recess here for ten or fifteen minutes until I decide what to do with this.

Mr. Nelson: Will it be understood then, Your Honor, that I can make one or two motions such as I am able at this time because——

The Court: You better make any other motions that you have to make preliminarily at this time.

RESUBMISSION OF MOTION TO DISMISS, ETC.

Mr. Nelson: I will, Your Honor. I must make this motion. In view of the fact that I was unable to prepare and I am not trained in law, the necessary motions, pre-trial motions, I move the Court that the motions filed in the [fol. 34] past pertaining to various rights that I should have protected, that they be applied to this case pending such time as I am able to get attorneys who will be able to bring those up to date, or write new ones applicable for

now. I respectfully ask the Court to permit me or to give me the right and protection which I am entitled to under those motions filed.

The Court: The only motion I find on record among the many papers is a motion to dismiss.

Mr. Nelson: Well, as I understand it, Your Honor, there were other motions. There was a motion regarding, I think it was on the question of a bill of particulars; and I think there was motions dealing with counsel even at that time.

The Court: You name them and I will consider them as motions made at this time, but you cannot make them in a general way because I do not have any knowledge of the record in the trial of the other case in which you were a party.

[fol. 35] Mr. Nelson: Will you permit me to file any motions which are going to be proper as the trial goes ahead or the course of time that I get counsel?

The Court: Any preliminary motions must be made before the jury is sworn. I told you I would give you until this morning to decide what they were that you wanted to file. Now is the time to file them, but I cannot accept in a general way a cover-all motion for me to consider every motion that was filed in the trial in the other case, I can't do that. If you want to file a particular motion or refer to particular motions with leave to prepare them in writing and file them later, you may do so.

Mr. Nelson: All right.

The Court: If you name them I will permit you to do it in that fashion.

Mr. Nelson: Yes. I believe I don't know the proper order of these, Your Honor, and I, therefore, am hesitant about it.

The Court: Well one was for a change of venue. As I [fol. 36] recall, that was one. Do you want to make that motion?

Mr. Nelson: Yes, I want to renew that motion.

The Court: What else?

Mr. Nelson: The bill of particulars.

The Court: A motion for a bill of particulars?

Mr. Nelson: That is right. And just a minute, Your Honor, let me see through my papers.

The Court: All right, refer to your papers.

Mr. Nelson: We stated the one for the

The Court: The change of venue, a bill of particulars, and a motion to postpone.

Mr. Nelson: A motion to dismiss the indictments. I have one final motion to make. I move the Court that I be permitted to consult with such counsel as I can obtain either here or elsewhere to help me write a motion, or, rather, write an affidavit indicating bias by the court and urge [fol. 37] the presiding judge of this trial to disqualify himself in this case on account of prejudice.

The Court: All right. You will set forth all bases for that allegation, of course, in your affidavit.

Mr. Nelson: Yes, Your Honor. I believe that I am entitled to that, and I believe there is sufficient reason to cause me to feel that you are acting, I mean, very biasedly towards me in this case and I couldn't possibly get a fair trial before you. However, I don't know how to formulate such a thing.

The Court: Well Mr. Glick who I presented to you yesterday is here. He is, I am sure, willing to ~~aid~~ you in your preparation of such a motion, if you want it done.

Mr. Nelson: So I move that you disqualify yourself in this case, and I be permitted to file the affidavit with all the particulars that the lawyer will help me draw up.

The Court: All right. Then you want permission to place [~~fol. ~~] in writing, in addition, the motion to postpone, the motion for change of venue, the motion for a bill of particulars, to dismiss the indictment, and for the present presiding judge to withdraw on account of alleged bias or prejudice?

Mr. Nelson: That is right.

The Court: All right, you may prepare those in writing and submit them, but do so at once.

Mr. Nelson? Is there a time limit on that?

The Court: Yes. By Noontime today. Mr. Glick is here today to help you.

Mr. Nelson: I am talking about the other motions.

The Court: Well your want to file a motion for change of venue. You entered it orally and you can prepare it by Noontime and file it by Noon. That will give you two hours. You certainly can prepare those motions by that time.

Mr. Nelson: I don't believe that I could write those in [fol. 39] that brief space of time.

The Court: With the assistance of counsel?

Mr. Nelson: He don't know anything about the case.

Mr. Cercone: He knows how to make formal motions.

Mr. Nelson: Except for the legal aspect of it.

The Court: These preliminary motions must be passed upon immediately, Mr. Nelson. You must file them, put them in writing by Noontime if you want them a matter of record here. Do it in that fashion or don't do it at all.

Mr. Nelson: In that case, Your Honor, you are pressing me unfairly, and I believe that is an added indication that——

The Court: That I am prejudiced.

Mr. Nelson: You are prejudiced and I can't get a fair trial before Your Honor.

The Court: All right, we understand you. File the motions [fol. 40] in writing by Noontime. You will have the assistance of Mr. Glick to do so. I will rule on the motions by that time.

Mr. Nelson: Where am I to appear and what time, Your Honor?

The Court: We will take a recess.

Recess

(After Recess.)

COLLOQUY BETWEEN COURT AND DEFENDANT

The Court: Do you have the other motions ready now, Mr. Nelson?

Mr. Nelson: They are not ready, Your Honor. What I have got is several motions that I found from the old trial, which you indicated to me may not be there.

The Court: They are not in the record as kept by the Clerk of Courts. Probably they were in the testimony.

Mr. Nelson: I had no chance to change them, nor did I feel qualified that I could improve them. I had very [fol. 41] little chance to discuss them with Mr. Glick; he only advised me on one of these. So that I have here—here's a motion to quash the indictment. I suppose I ought to sign that—as introduced in the trial last year. Here

was the request for continuance, by Mr. McTernan when he came into the case, which raised certain questions that the defense faced then. And I feel that there are some points raised here that I need to have introduced here to give me added protection. I haven't signed that yet; I think I should. I had no chance to certify them.

The Court: They are signed; that is all we are looking for.

Mr. Nelson: Then I have one brief motion which I wrote up now asking for a change of venue, indicating the reasons why, and to which I attach the similar motion—or, a similar motion that was introduced in the last year's trial.

The Court: Very well.

Mr. Nelson: Yes, this is signed. Then I have here [fol. 42] a motion dealing with the matter raised this morning regarding what I believe to be prejudice and bias on the part of the Court, and the reasons that I have been able to cite briefly here. I had no time to attach clippings, which I couldn't get in time.

The Court: Well, it is not necessary to attach supporting evidence. If the reasons are sufficiently definite, why, we will consider them.

Mr. Nelson: Well do you want me to make my points or argue on them now, or do you want to read them first?

The Court: No. We will consider them, and after lunch you may have an opportunity of adding to them if you wish orally.

Now as to your general motions for postponement which have been submitted, which I have been studying, I think we have been through most of it before—your inability to get counsel. I have rejected that as a reason for the reasons I have already stated on the record here. You [fol. 43] have undoubtedly been in contact with many lawyers in New York City, Cleveland, Detroit, Philadelphia, West Virginia, California, Portland, and Pittsburgh lawyers; so that you have had some ability to make contact with them, if not personally, by letter or other means of communication. As to the presently suggested lawyers (Mr. Martin, Mr. Doty, Mr. Blanchfield, and Mr. Glick) we understand that they were suggested to you only re-

cently, and we have overruled their requests for postponement in order to prepare for your trial. I think that needs no further discussion.

Mr. Nelson: Mr. Blanchfield did not ask for more time.

The Court: Mr. Glick, specifically, asked for more time, but I think Mr. Blanchfield said he would proceed immediately, yes, that is true. In addition, you say that you have been restricted in travel. Well, that is true, we did restrict you to going out of the State, I think for a period [fol. 44] of one week on one occasion. And you were granted other privileges to travel within the State, were you not?

Mr. Nelson: No, Your Honor. I understood that I had to be—I had to stay within the County. In fact, that matter came up last year, not knowing that I had to be in the County I took a trip to Philadelphia and that was made a big point here by the prosecution.

The Court: Possibly I was mistaken, but I thought you had been granted additional privileges. The only thing that impresses me on this, Mr. Nelson, there is an allegation of present disability, or what disability you had, a remnant of it at this time that precludes you from conducting your own defense here. I refuse to consider that disability as having anything to do with the procurement of lawyers; but I will consider it as a reason for further postponement if you are not physically able to defend yourself in this matter. Now you haven't any supporting evidence other than the examination and report that I have from Doctor [fol. 45] J. Huber Wagner and Doctor Max H. Weinberg, who indicated two months ago that you were still convalescing. Now if you wish me to, in fairness to you, I will be very happy to delay starting this thing until Doctor Wagner and Doctor Weinberg make a present examination of you. And if they will certify that you are at this time unable to proceed with the trial acting in the capacity as your own lawyer as well as defendant, I think there is merit in your request for further postponement. If they are of the opinion that you have progressed sufficiently to engage in the matter before us as both defendant and acting as your own lawyer, we will have to ask you to proceed, unless different action is taken on the other motions.

for change of venue, a bill of particulars, and prejudice, and so forth, which we will discuss with you this afternoon.

Now I present the question to you at this time: Do you want to submit yourself to further examination by Doctor Wagner and Doctor Weinberg at this time for the determination of that point?

[fol. 46] Mr. Nelson: Yes, Your Honor, I am willing to submit to those gentlemen for examination, but bear in mind that I don't think that ought to raise the question of the kind of a financial matter that becomes to me. These men are highly qualified doctors and every time you see them it costs a good deal of money.

The Court: Yes, I realize that.

Mr. Nelson: And I still owe them for the last examination, because I am strapped with it, from finances. So there is that matter. However, I would be willing to submit to their examination if the Court so orders, without any financial hardship on me. That hardship was brought on the last time by the prosecutor, who claimed that I was faking. He got up and said—I think it was Van der Voort—got up in this Court before Judge Kennedy and said, "This is some more of that Commie stalling tactics." And that caused me a good deal of expense, cost me a good bit of money, as well as an insult, which was carried in the newspapers.

[fol. 47] The Court: Well the only reason that I think the burden is on you in this matter is that in this affidavit which you filed with me you say that you are still under medical care and suffering from concussion, pain in the right leg, and because of a nerve injury you have no control of the leg, your head concussion is causing you severe pain. Now at this time all I have on that is your own word, an affidavit. Therefore, I think the burden is on you to submit to me medical testimony on the point, on which you are relying, as I understand you, for further postponement of this matter.

Mr. Nelson: Well, I will ask Your Honor to give me a chance to see the doctor with whom I had an appointment that was arranged for me by Mr. Moore, my doctor in Philadelphia, at Temple University Hospital. I under-

stand he made the appointment for me with a specialist—I think the name was "Doctor Scott"—and I was to see him this afternoon. I had to send him a wire that I couldn't come because I saw no chance of getting any [fol. 48] reasonable cooperation on your part, so I had to send him a telegram that I couldn't come. And I believe that those doctors there who had helped me tremendously would have been of aid to me; and I am sure that Doctor Wagner would agree, as well as Doctor Weinberg, that they are the most qualified men in the field and they would have given their indication what my shape is in, what my physical shape is.

The Court: I know that Doctor Scott and Doctor Moore did take X-rays at Temple University Hospital, a rather large number of them, indicating that you had been closely observed and examined. I do not know the reputation of those men, and unless the District Attorney would have some objection, I would give consideration to a report from Doctor Scott and Doctor Moore, subject to confirmation by Doctor Wagner, that he would look at the report and tell me that the conclusion drawn is based on sufficient facts and the reputation of the man is such as to justify my reliance upon his credibility, I would be glad to consider such a report.

[fol. 49] Mr. Nelson: Well, may the court please, I don't know the man either, I never heard of his name, I don't know what he looks like.

The Court: That is more reason why we should rely on him.

Mr. Nelson: This was to be the first time for special examination. The orthopedic aspect of cases are taken care of by Doctor Moore, and the last time I saw him he told me that I would have to come back to see him once more at least, and set the date for January the 18th or—I had the card for that but I don't know what this other man would say about what he finds.

The Court: Well are you willing to rely on what he would say as to your ability to proceed with the trial of this case acting as your own counsel? I cannot force you to take counsel if you don't want to take counsel. You claim you have been unable to get counsel, and the only

thing I can do is afford you the opportunity of having counsel. You are given that opportunity. If you decline [fol. 50] it, then I am placed in a position of having to compel you to proceed with the trial unless you are physically unable to proceed.

Mr. Nelson: I indicated to you that I could not go to trial here without counsel. It was a different matter in the first trial—and I don't think that Mr. Cercone, who made these particular objections several times, needs to be facetious about it, he knows that, and I know and Your Honor knows that I had at my hand there a capable attorney who was able to defend my legal rights which I did not understand. In this trial the situation is different. I would have to take care of my political rights, political views which are on trial, as well as my legal rights, in which I am not trained. So I need counsel now whether I am well or not—I need counsel. I contend that I am not well enough to go to trial at all. I would much prefer if the Court would appoint local doctors to examine me, not compel me to run around still further and make an imposition on these new doctors to write affidavits and whatnot. You know they are complicated and they don't like to do that. [fol. 51] Since the matter is in the hands of these doctors, I don't know them, I never met them before the Court has appointed them, so let them find their answer to the question. I think the Court is obligated to that extent to do that.

Mr. Cercone: I think that this——

Mr. Nelson: I have one more word, Mr. Cercone, if you please. I want to raise objections too—that is, take exceptions to the rulings that you have made regarding those questions that were before you this morning.

The Court: Well, we have not ruled on them yet. I am asking you whether or not you will submit yourself to doctors for a determination of that matter. So we are at the point of deciding whether or not you will pay for such an examination. I have indicated to you that since you wish that asserted as a reason for further delay, that it should be your obligation. If you are willing to submit yourself to Doctor Weinberg and Doctor Wagner again, possibly they would merely charge you a nominal

[fol. 52] amount since it is a re-examination and calls for only the reaffirmance of their previous conclusion. However, I don't know, I don't know what the charges of the men were in the first instance, and I don't know what they would charge you now. But I have no way of defraying your expense from this position.

Mr. Nelson: From my point of view it would be better all around, even though it is going to be harder for me to make the trip, to go to Philadelphia, because I could, in addition to obtaining this affidavit, which I don't know what it will be, I will at least get such treatment as I need, you might say in the same package.

The Court: We will appoint him for treatment as a specialist if there is a good reason.

Mr. Nelson: Well, that is going to be a hardship but I think it may work out better for me, and probably less expensive.

Mr. Lewis: I would like to state the Commonwealth's position. There is only one question here, as we see it, [fol. 53] and that is whether or not Mr. Nelson is physically able to go to trial today. Now I say that he should be examined by a reputable physician in this County where he can be examined just as soon as possible, so that we won't have any more delay. We know nothing about those doctors down in Philadelphia. Perhaps they are reputable doctors, but after all they are going to be Mr. Nelson's doctors, who he is going to for treatment. And I believe we should have doctors that are absolutely neutral in this matter, and I think it should be done right away. If he is allowed to go to Philadelphia for this examination it is just going to be more delay and it is going to be an examination by his own doctors. The Commonwealth objects to that.

The Court: Well, Doctor Wagner and Doctor Weinberg were his own doctors. They were suggested by the Court and he, at that suggestion, engaged them. We, the Court, the County, did not pay those doctors, as indicated here.

Mr. Nelson: Your Honor, the County is raising [fol. 54] these objections—the prosecution is—and if they insist, then let them pay for it.

Mr. Lewis: We are not raising it; you are raising it.

The Court: Yes, you are raising the question.

Mr. Nelson: You are raising the doubt about it. I am telling you the facts.

Mr. Cercone: You would be spending more money for transportation going to Philadelphia than to have a doctor here. He has been going to Philadelphia every weekend, and New York.

The Court: He has a right to bring in any doctor he wishes.

Mr. Nelson: I object to that, Your Honor, because I have not. The record will show that I made two trips East with the knowledge of the Court, in the last two months.

Mr. Cercone: That's right, with the knowledge of the Court, yes.

[fol. 55] Mr. Nelson: Well, I take exception to that, Your Honor, because that isn't true.

The Court: If we had known that you had taken trips without our knowledge it would be, of course, a violation of your bond, and probably we could assume that you did not.

Mr. Nelson: How could I with them hanging around my place and my house all the time?

Mr. Cercone: If Your Honor please, Mr. Nelson will talk here for the next month if the Court lets him. I think he is physically fit for trial and ought to be tried.

The Court: Well I am not going to be put in the position of forcing him to try his case himself if he is not physically able. I want some information concerning that, and we are giving him an opportunity to present that information to me, either from Doctor Wagner and Doctor Weinberg, or from the Doctor in Philadelphia. Now if you don't agree with the doctor from Philadelphia, then I will afford you the opportunity of having him examined, too.

[fol. 56] Mr. Cercone: Well, I say that ostensibly there is nothing wrong with the man now. He is up here arguing with the Court.

The Court: Well he says that there is.

Mr. Cercone: He is filing petitions and making all kinds of suggestions to the Court here. He is in perfect physical condition as far as we can see it.

The Court: And the Court is here to adjust the matter equitably between the Commonwealth and the defendant, and we shall do so as long as we are sitting in court and so long as there is an issue involved we are going to settle the issue. We might as well have an understanding on that now among all of us.

Now as I said to you both, the issue involved here is whether or not I am right in forcing him to stand trial and be his own lawyer in his physical condition before I do know his condition. Before I do so I must have information to that effect, that he is sufficiently convalesced. There [fol. 57] is no denying that he was injured and injured seriously. I think that is admitted by all. The question is whether he has overcome the effects of that injury so that he can proceed here and start this case and complete it, rather than forcing him to start it and then he will break down or something like that and we will have to continue it indefinitely and never get it finished.

Mr. Lewis: Well the Commonwealth agrees with that, Your Honor, but we feel that the examination ought to be done here in Pittsburgh. We have competent doctors here and it can be done with due dispatch so that we will know exactly where we stand. I don't believe it is necessary for Mr. Nelson to run down to Philadelphia.

The Court: All right, you may be justified in that position. Can you suggest some way or some doctor that you want to examine him?

Mr. Cercone: It ought to be done by the same doctors as the last time.

Mr. Lewis: Doctor Wagner.

[fol. 58] Mr. Cercone: He can do it right away.

The Court: We have confidence in Doctor Wagner and Doctor Weinberg, so I see no reason why you should not submit to them again, except for the matter of expense.

Mr. Nelson: That is the only problem.

The Court: It is not our problem. You want us to consider that, Mr. Nelson, as a reason for postponing this case further and it seems to me that you are the one that must provide that information to us. You are asserting your inability: you should establish it.

Mr. Nelson: Your Honor, the reason I am reluctant to accept everything that the prosecution throws in front of

me is because of financial reasons, and all these things are terribly expensive to me.

The Court: Yes, it is.

Mr. Nelson: And as I thought about the matter here, [fol. 59] after I do get examined by them I still get no assistance from them. That's my point.

The Court: It will merely be an examination. You will get no treatment.

Mr. Nelson: So that I have reasons to ask—good reasons, valid reasons, to ask to be examined by those who will also recommend treatment. And, therefore, I think that the Court is weighing the question, and I believe that probably the best thing will be if I see those men where I am already committed financially. And, incidentally, I hope the insurance company will pay for it—so that is a consideration.

The Court: Well that may be, I think you are perfectly right, but I think it would be cheaper and I don't think Doctor Weinberg or Doctor Wagner would charge you an exorbitant fee for this additional certification confirming what their findings were. They have your history and all. If you will submit yourself to them and have them send me a report as they did the last time (at your expense, of course) why, I will delay this thing until I get that report. [fol. 60] I will make the necessary arrangements with them for their examination of you.

Mr. Nelson: It seems that I have no choice, Your Honor. I think I will accept this proposition. Does it mean that the Court will call him up and tell him to make such arrangements with me?

The Court: I will go that far with you, I will call Doctor Wagner and Doctor Weinberg and ask them if they will give you a current, up to date report on your present condition.

Mr. Nelson: All right.

The Court: With the idea of answering the question of whether or not you can undertake and endure this trial and act as your own counsel.

Mr. Nelson: Yes, sir.

The Court: Now I will try to communicate with Doctor Wagner and Doctor Weinberg this afternoon. If you will [fol. 61] remain in the courtroom—not in the courtroom,

but in the vicinity of the courtroom, until we have made the contact. We will advise you when and where that examination can be made.

Mr. Nelson: I see. Will I be required to be in this afternoon at any particular time regarding these other motions?

The Court: Well, I should say we will recess until two o'clock.

Mr. Nelson: I see. All right.

The Court: That will give you some definite information as to what time to return.

(Noon Recess)

Afternoon Session

The Court: The delay here has been due to my efforts to communicate with these doctors. Insofar as Doctor Wagner is concerned, he will see you now, Mr. Nelson, as soon as you can get over to his office. Insofar as Doctor Wein-
[fol. 62] berg is concerned, I have not been able to locate him yet; but as soon as I do I will make arrangements for you to visit him. So that until you have been so examined, I see no reason to proceed with the arguments on these other motions. If you are examined and found not physically able to proceed, you will have to renew those motions when the matter is re-listed. So that the first thing to be attended to is your examination. I would suggest that you go to Doctor Wagner's office on William Penn Place—Doctor J. Huber Wagner—just the other side of the street, below Grant Street here, and subject yourself to his examination. I asked him to give me a report on the basis of your ability to proceed with the trial and act as your own counsel, and to report to me this afternoon or the first thing in the morning.

Mr. Nelson: Your Honor, would you grant me the right to have the two doctors meet together, if I could so make the arrangement?

The Court: If you can make the arrangement, I have no objection. I am having a hard enough time to get them
[fol. 63] to examine you separately, but if you can have them examine you together, that is quite agreeable with me.

Mr. Nelson: I felt that since one man is a specialist in one field and the other one in another——

The Court: Well they can examine you separately and then collaborate and decide what their opinion is. They may do as they did before and file a joint report, and examine you individually. That is agreeable with me as long as I get a report in here by tomorrow morning.

Doctor Wagner is waiting for you now. If you will come back, or have him call as soon as he is through with you, I will give you word about Doctor Weinberg at that time, I hope.

Mr. Nelson: All right.

The Court: So that these other matters will wait until we find out what disposition will be made of your motion to postpone this trial on the basis of your physical condition.

We will recess until tomorrow morning at 9:30.

[fol. 64] (Court adjourns at 2:30 o'clock P.M. until tomorrow morning at 9:30 o'clock A.M.)

(Thursday, December 6, 1951 Court convenes pursuant to recess of yesterday afternoon.)

Morning Session

The Court: The Court has received word from Doctor J. Huber Wagner that you are physically able to proceed with the trial, Mr. Nelson. The Court has also received word from Doctor Max H. Weinberg that he cannot certify to that fact unless you are subjected to a test which he recommends. If that test is negative, he says it is his opinion that you are capable of proceeding with your trial, Mr. Nelson. If it is positive, a delay should be granted to you. I suppose Doctor Weinberg explained that to you, did he?

Mr. Nelson: No, he didn't.

The Court: You were examined by him last evening——

[fol. 65] Mr. Nelson: That is right.

The Court: And I have his written report before me. That test is what is known as a pneumoen-cephalogram. He recommends that it be done, Mr. Cercone.

Are you willing to submit yourself to such a test, Mr. Nelson?

Mr. Nelson: Well, Your Honor, I think that this puts the burden, financial as well as other burdens on me. At least that has been the position of the Court until now and I don't think that is fair.

The Court: You want the postponement based on your physical condition, so it is up to you to establish it. We have gone over that before.

Mr. Nelson: Your Honor, I want the record to show—and I would like to look over the petition that I gave you because it was given in handwriting and I kept no record, that is, I had no duplicate of it—I want to see how that [fol. 66] point was phrased, because my intention was, in raising the physical situation, that I was under—to indicate that I was not able to run around, as the implication was from the prosecution and from the Court as well, to go out freely and get counsel. That was one element in the situation, although the main reason I didn't get counsel, and it is for that reason I can't go to trial, because of the political climate and because of the prejudice here where lawyers fear to take on my case. I wanted that to be strictly understood, Your Honor. I can't put it in legal words, but my intention is now to make that absolutely clear.

The Court: I think that is clear.

Mr. Nelson: Two months ago when I went to see those two doctors that were appointed by either yourself or Judge Kennedy——

The Court: It was Judge Kennedy.

Mr. Nelson: I told them: I didn't come here to cry to you gentlemen regarding my physical situation. I think [fol. 67] that any competent doctor that would examine me would have known that I was not in shape to go ahead. Well, if they give you an answer then that I was not in physical shape to undergo a trial then, it should be assumed, it seems to me, that I wasn't free to run around, that I had to convalesce and recover—and there was that element that I raised in my petiton.

The Court: We have overruled that objecton, Mr. Nelson, and I granted you an exception. If we are wrong in that, of course, if the verdict would be against you, you would have a right to argue that before an Appellate Court. The

only other thing in your petition which I interpreted—possibly erroneously—that after having your motion overruled for a continuance on the basis of lack of counsel, you say you are physically unable to carry on yourself. Now if I am wrong in that, we will proceed immediately.

Mr. Nelson: I indicated, Your Honor, that I am not competent to defend myself legally, properly.

The Court: Not by reason of your health?

[fol. 68] Mr. Nelson: Not by that alone, but I am also under physical strain and if I am compelled to go to trial without counsel it would be doubly difficult; it will be to my disadvantage, and I think the Court should consider that and give me a chance to get prepared for the trial with adequate counsel, and recover as well as I might within a reasonable time to be able to undergo that strain.

The Court: Well, I answered you on that many times, and I will answer you again that I feel you have had ample opportunity to get counsel and, therefore, as I told you two months ago, I cannot entertain that as a reason for further postponement. So if that is the reason you are relying on, we will proceed to summon the panel of jurors after disposing of these other motions, and proceed. If you are not relying on your physical condition at this time, there is no need for us to bother the doctors any longer or any more.

Mr. Nelson: One moment, Your Honor. Shouldn't I be [fol. 69] allowed to read their reports, the first one and the second one as well?

The Court: Well, they are personal reports to me; I decline to let you see the first one. I told you you could go and see the doctors and they could tell you everything about your condition that was important for your information. And likewise with this one, you can see Doctor Weinberg and you can see Doctor Wagner. These reports are in my possession. You know they are available here and I see no reason in submitting them to you at this time. You still have the opportunity of consulting the doctors about their opinions. I have indicated what Doctor Weinberg has concluded.

Mr. Nelson: Let me ask you a question, Your Honor.

The Court: Yes.

Mr. Nelson: If I had an attorney in this case would he be entitled to read that report?

The Court: He wouldn't any more than you are.

[fol. 70] Mr. Nelson: He wouldn't?

The Court: No, sir.

Mr. Nelson: Well, I take exception to that, Your Honor. I believe anything connected with me is my rights, particularly when the Court ordered me to pay for that record.

The Court: That is right.

Mr. Nelson: I think that indicates unfairness on your part, and prejudice. And I believe that is putting me at a disadvantage to go ahead with this trial under these circumstances. Now I want to ask another question: Is it the order of this Court that I find these doctors or are you going to pick them again and have me pay for their services?

The Court: You will have to pay for their services if you want their evidence. I am not going to pick them. Doctor Weinberg suggested two doctors. He suggested Doctor Rowe or Doctor Bragdon. I am not personally acquainted with either one of them. Doctor Rowe is associated with [fol. 71] the West Penn Hospital, and Doctor Bragdon with the Mercy Hospital. You can make your selection and talk to Doctor Weinberg about it again if you wish. I haven't any objection to that.

Mr. Nelson: Doctor Weinberg was very uncommunicative as to what his opinions were, and I presumed that to be because he wanted to consult with the other doctor in the matter—I don't know.

The Court: Well, they sent in separate reports.

Mr. Nelson: I didn't know what the case was. I want it—well, I won't go into the matter of doctors until that matter is completely concluded as to what I think about how this matter was handled.

The Court: Do you want to submit to this suggested test at the hands of either Doctor Rowe or Doctor Bragdon, or any neuro surgeon you may select? I have no suggestion; you can name your own neuro-surgeon.

[fol. 72] Mr. Nelson: In view of the fact that I don't know any, I will submit to this examination under protest, Your Honor.

The Court: Well, you can either submit to it or not submit to it; I am not compelling you.

Mr. Nelson: I want the record to show that I have been put through a grill here on the part of prosecution; they have been unreasonable with me all along; they made state-

ments here in court which are played up in the Press that I am just trying to hide behind this question of the accident and illness and I think this is a continuation of the same thing, Your Honor.

The Court: The District Attorney has not said a word this morning.

Mr. Cercone: I would like to say something, though, Your Honor. I think this court is interested only in the highest ideals of justice and in giving equal protection to all who come before it; but in return for its kind considerations it is receiving nothing but defiant ridicule from this defend- [fol. 73] ant, who is interested in nothing but making this court an instrument for his propaganda. He is following the blueprint of the Communist Party tactics on how to tie up a court and making a mockery of the court processes. Now he came in here yesterday and said that he was not physically capable of going through a trial in this court; and you have taken out time and patience in making arrangements for an examination by two eminent doctors of this City, and has now reported what that examination is and he refuses to submit to an examination by the doctor who examined him yesterday—he did it under protest.

Mr. Nelson: I object to that. I said I will submit to the examination. And I think that Mr. Cercone ought to consider that he knows the meaning of the words and he knows that I didn't say that.

Mr. Cercone: I think this defendant is pretending a hoax——

[fol. 74] The Court: Now both of you will remain silent, or I will take some action concerning both of you. I have listened to both of you and now I will do some talking here for a change.

Do you want this examination or do you not want it, Mr. Nelson?

Mr. Nelson: I said, Your Honor, I would submit to this examination if that is the wish of the Court.

The Court: I do not have any wish on it. You have a motion before me to postpone this case. As I interpret your motion, it says you are physically and mentally incapacitated and cannot proceed with the trial. Now if you want to pursue that motion I will give you an opportunity of supporting it by this additional evidence. If you don't

want to pursue it, why, we will proceed with the trial. So tell me what you want to do, without further argument about it.

Mr. Nelson: Your Honor, can I read that affidavit I gave you just to refresh my memory on how that was put?

[fol. 75] The Court: Yes. It starts out with this:

> "I am still under medical care, suffering from concussion, pain in right leg, and because of nerve injury no control of my leg. Head concussion causes severe pain, and the leg injury makes it difficult to get around. The nerve in my left arm was injured and my fingers are numb, and I suffer discomfort from cold particularly. Also have what is called 'frozen right shoulder'. My physical incapacity was such that two doctors appointed by this court on or about October 5th — that I am unable to undergo trial. Despite my physical condition I have made the following efforts to obtain counsel for this trial:" — and then you name a lot of them.

Now that indicates to me that you are still persisting in the idea that you are physically unable to proceed with the trial at this time. If I am wrong, point it out to me or tell me I am wrong.

Mr. Nelson: Your Honor, I believe that the petition will [fol. 76] substantiate to what I was trying to say, that that is my offer.

The Court: I recognize that. I recognize the fact that you are relying on the fact that you could not get around to get counsel, but——

Mr. Nelson: Right.

The Court: I say that your petition indicates that you did get around; you communicated with a lot of lawyers; you went to New York and Reading. Therefore, I overrule it on that particular point. If you don't want me to consider your present physical condition, just say so and we will proceed. If you want me to consider that, then subject yourself to the further examination or test that Doctor Weinberg wants you to submit to — tell me one way or the other.

Mr. Nelson: I will submit to it.

The Court: All right.

Mr. Nelson: Let it be known—let it be noted, Your Honor, that this has been done at a tremendous difficulty to me—I mean all these—

[fol. 77] The Court: Financially I agree with you, yes. But you asked for the postponement on the basis of physical incapacity and it is up to you to give the supporting evidence to this court on it—and not at the expense of the taxpayers to have you examined to determine whether or not your motion is justified. You have to support that motion with your evidence. I am giving you ample opportunity. I postponed this case day-by-day and I will postpone it now if you want to submit yourself to further examination today again. I will not force you to go to trial, with or without counsel, until I get a report from the both doctors that we referred you to at the beginning.

Mr. Nelson: Well, just let me ask you one more question bearing on another point then. Then do you propose to dispose of these motions later on after you get the report?

The Court: If you are not subject to trial there is no use disposing of the motions at this time, if you are incapable [fol. 78] of proceeding to trial. If Doctor Weinberg says you are well, I will overrule the motion.

Mr. Nelson: Who takes care of this arrangement?

The Court: I will call Doctor Weinberg, as I did yesterday. Which doctor do you want? Doctor Rowe or Doctor Bragdon?

Mr. Nelson: I don't know either one of them.

The Court: Neither do I.

Mr. Nelson: Will you consult with Doctor Weinberg on the matter?

The Court: Suppose I send you back to Doctor Weinberg yourself and you consult with him as to which one would perform this today, or without delay, and let him make the arrangements for you. I will call Doctor Weinberg and tell him you will meet him at the West Penn Hospital, where I think he is now, and possibly Doctor Rowe who is at the West Penn Hospital. He would be the most likely one.

Mr. Nelson: All right, I will wait out here.

[fol. 79] The Court: You wait here and I will make the

arrangements for you and send you wherever Doctor Weinberg wants you to go.

Mr. Nelson: Yes, sir.

The Court: All right, recess this court until ten-thirty.

Short Recess

(After recess)

The Court: Make this a matter of record: I just talked with Doctor Weinberg, Mr. Nelson, and he can have Doctor Rowe perform that test today. The results of the test, however, cannot be determined for five days, Mr. Cercone; therefore, Doctor Weinberg cannot give us his opinion until Tuesday of next week. I have no alternative then except to recess this case, or postpone it until next Tuesday until I get that report.

Now, Mr. Nelson, on the matter of counsel, it seems to me I would recommend——

Mr. Nelson: You say that, Your Honor, I can—can I ask [fol. 80] a question with regard to the medical aspect?

The Court: Yes, sir.

Mr. Nelson: I hope I understand your ruling right, that I can consult with Doctor Weinberg and still determine whether I want to undergo that test, because I don't know what it means. I don't understand this medical phrase.

The Court: I don't know what it is either. The doctor tried to explain it to me over the telephone—they take fluid from your spine.

Mr. Nelson: I gathered that much.

The Court: And that gives them an objective result. In other words, all Doctor Weinberg has now are your complaints. He cannot confirm them or deny them, but this test will give him something objective, something definite to either say that you are justified in your complaints or they are not justified.

[fol. 81] Mr. Nelson: Yes, but do I understand that I have the right under this ruling to consult with him and if I think it is a dangerous kind of a thing, as some of these things are, I have a right to refuse it and come to report to you; is that right?

The Court: Yes, but you will have to do that today, be-

cause I think that rather than adjourn this case until Tuesday then, on that basis I will adjourn it until tomorrow morning. If you elect to subject yourself to it, then we will give Doctor Weinberg the additional time to get his report in, which will be until next Tuesday. If you don't, then we will have to proceed tomorrow morning.

Mr. Nelson: Yes, sir.

The Court: Now as to the matter of counsel, I imagine you have seen Mr. Glick in attendance; he volunteered to attend you at my request, so that you could be informed as to procedural matters, not that he is going to advise you on how to handle your case or outline your defense for you. [fol. 82] But he was here to advise you on procedural matters and help you prepare motions and anything of that nature. He reports to me now that you do not desire his assistance and you do not desire his presence. I just wanted you to know why I had asked him to be here in attendance. If you do not want him, that is a matter for you to decide. He was doing it as a matter of being helpful to you. I could have done it myself from the bench here as we went along, but I thought that probably he could aid you more readily than I. So that is the reason why he was here. If you don't want him; of course, I will not continue my request that he be present.

Mr. Nelson: Well, Your Honor, I never understood that he was my attorney.

The Court: He wasn't; he was an arm of the court; he was here to advise you as I would have advised you myself.

Mr. Nelson: And I asked specifically—I asked the court specifically that I needed an attorney to help me on one [fol. 83] motion; and it was on that motion alone that Mr. Glick was consulted by myself. I took his words in this court to mean something, and I respect the man for stating the thing that he did in this court, that he couldn't have conscientiously undertaken my case without some time to prepare. Consequently I was going to put him at a disadvantage and put myself in jeopardy, denying my rights here. And for that reason I thought it would be unfair for the court to insist that he work with me.

The Court: I did not insist; I just told him to be here

case you needed assistance—as we do for many defendants—although we never do it for defendants who are other than indigent, who do not have the money to pay. We appoint counsel for them, or request counsel to volunteer their services. But in this case I did it because you were electing to proceed without counsel, and I asked him to be here. So if his presence is not desired, if you do not want to use his services, that is quite agreeable, Mr. Nelson.

[fol. 84] Mr. Nelson: I just wanted the record to be clear that I had consulted with him on one motion. He had no chance to see any of my material—or, rather, to read the case. There is no question about that. And, therefore, I actually had no counsel to present the preliminary proceedings.

The Court: That is perfectly all right. It is not a matter of embarrassing you or placing you in an embarrassing position. It was done by the court just as a matter of convenience if you wanted to use him, why, you could. All right, we will recess this case until tomorrow morning at nine-thirty. If you report back to me that you have submitted yourself to this test we will postpone it then until Tuesday the 11th, in order to get Doctor Weinberg's final report. If you do not submit to the test we will proceed with the matter tomorrow morning.

(Court adjourns at 10:37 o'clock A.M. until tomorrow morning at 9:30 o'clock A. M.)

[fol. 85] (Friday, December 7, 1951 Court convenes pursuant to recess of yesterday morning.)

The Court: All right, Mr. Lewis, I thought you should be present to hear the present situation. Mr. Nelson, according to information received from his wife, went out to the West Penn Hospital yesterday at 12:30 as I directed him to do. Doctor Rowe and Doctor Weinberg were unable to make the necessary arrangements to subject him to the test yesterday afternoon and instructed him to return at four o'clock, at which time he did return and was admitted to the hospital as a patient. It will be necessary that he be confined there for at least three days. I confirmed all

this by telephone call to the hospital this morning, and he is there as a patient under the charge of Doctor Rowe and Doctor Weinberg. It is, therefore, necessary that I again postpone this case until I receive the final report from Doctor Weinberg after the tests are made. So, not knowing when the results of the test will reach me, I will post-
[fol. 86] pone this until Tuesday the 11th, as I stated yesterday. It may be that it will have to be continued until Wednesday the 12th, but nevertheless it is tentatively the 11th, and I hope that we have received the report from Doctor Weinberg by that time. As you heard me state yesterday, it was Doctor Weinberg's preliminary report submitted in writing to me, that stated that if the results of the test are negative there is no reason why he should not proceed to trial at once (that was the opinion of Doctor Wagner as to his physical condition), but if it would be positive, these tests, indicating some remaining mental disturbance as a result of this accident, then it will be necessary to postpone it, according to the word of Doctor Weinberg, another month, or so. What the "so" means we will have to learn from the Doctor. Of course, if the test discloses something they will know what it is and what treatment will be required. So it may be helpful in reducing the period of convalescence, as it were, or remaining
[fols. 87-87a] disability, once they know what the trouble is. So, that is all we can do at this time. The case will be continued until Tuesday.

(Court adjourns at 10:45 o'clock A. M. until Tuesday, December 11, 1951 at 9:30 A. M.)

Judge's Certificate to foregoing transcript omitted in printing.

CONTINUANCES

[fol. 88] (Tuesday, December 11, 1951, Court convenes pursuant to recess of Friday, December 7, 1951.)

Mr. Dolsen: Your Honor, Mr. Nelson——

The Court: What is your name?

Mr. Dolsen: James H. Dolsen. Mr. Nelson asked me to come down here to inform you that he is very sick in bed, he had chills last night and this morning—that is what he stated and his wife has stated. He has a subnormal temperature. He reported to Doctor Weinberg yesterday and I think Doctor Weinberg informed you at that time—I am not sure——

The Court: I have a message from Doctor Weinberg

Mr. Dolsen: And Doctor Weinberg then had stated, after Mr. Nelson called, that he would see him this morning about eight o'clock. Then afterwards he telephoned to him and said it was impossible but that he would see him sometime during the day. Now his wife said that he had a very bad [fol. 89] night of it. This is what Doctor Weinberg said, he would see him sometime today and check on his condition.

The Court: Well that is, in substance, what Doctor Weinberg told me by telephone last evening, that there were some temporary after-effects to these tests and he could not certify him as ready for trial until after he examined him again today; that he would examine him sometime after Noon and report to me. So his message is, aside from the physical ailments that he complains of now, the same as Doctor Weinberg informed me. So we cannot proceed until we get the final report from Doctor Weinberg.

Mr. Dolsen: Does that mean then that he will be informed then after you get this report?

The Court: Well, Doctor Weinberg will inform me today, so the only thing I can do is to carry this over from day to day until Doctor Weinberg certifies him ready. So, it is tomorrow morning for trial, conditioned on Doctor Wein- [fol. 90] berg's report that he is in satisfactory condition to go to trial.

Mr. Dolsen: That will be nine thirty tomorrow morning?

The Court: Nine thirty tomorrow morning.

Mr. Dolsen: I will inform him of that.

The Court: Very well, sir.

Make this a matter of record: These men have asked me about the results of the test. Insofar as the tests were concerned, Doctor Weinberg has given me a report that they are negative as to any remnants of concussion or other mental or nervous disturbance goes from the accident. The reason Doctor Weinberg is not certifying him for trial is because there are some temporary after-effects of the tests themselves—the taking of fluid from the spine under anesthetic, and also an additional test made of an electroencephalogram. It is only these temporary after-effects that are concerning Doctor Weinberg at this time.

[fol. 91] (Court adjourns at 9:40 o'clock A. M. until tomorrow, Wednesday, December 12, 1951, at 9:30 o'clock A. M.)

(Wednesday, December 12, 1951, Court convenes pursuant to recess of yesterday morning.)

The Court: All right, Mr. Dolsen, you have a report from Mr. Nelson again this morning, do you?

Mr. Dolsen: Yes. He was ordered by Doctor Weinberg to remain in bed pending his orders. And I understood that he communicated to you——

The Court: Yes; Doctor Weinberg calls me each evening and advises me after his examination, 'His report last night was as you indicate, that Mr. Nelson still has some results of complaints from the tests that were made, and cannot appear this morning. So we will continue this case again until tomorrow morning, until I get another report from Doctor Weinberg this evening. Doctor Weinberg, inci-

[fol. 92] dentally, gentlemen, is leaving town for a medical convention, I think, tomorrow, and is going to ask Doctor Rowe to observe the patient during his absence. So I expect to get future reports from Doctor Rowe or one of the assistants during Doctor Weinberg's absence. But until I get clearance from him we will have to continue to postpone this case from day to day.

All right, tomorrow morning it will be—we will expect another report on it, Mr. Dolsen.

(Court adjourns at 9:45 o'clock A.M. until tomorrow, Thursday, December 13, 1951, at 9:30 o'clock A.M.)

(Thursday, December 13, 1951, Court convenes pursuant to recess of yesterday morning.)

The Court: Mr. Dolsen.

Mr. Dolsen: Your Honor, the doctor reported that he has stated that he was to remain in bed and he was not to move or stir around.

[fol. 93] The Court: Well, that is not all of the Doctor's report, Mr. Dolsen. As I received it, Doctor Weinberg informed me that although he is to remain in bed this morning, that he is greatly improved and that there is no reason why he cannot come in here and proceed with this trial within a day or so.

Now on the basis of that, I am not going to force him to come in tomorrow—I will give him the weekend to fully recuperate, if any additional time is necessary, and postpone this case until Monday morning. Tell Mr. Nelson that based on the reports of Doctor Wagner and Doctor Weinberg, as I have them, there is no reason why he should not appear here Monday morning and proceed with the trial of this case.

Mr. Dolsen: I will report that to him.

The Court: So that is the information that I received from Doctor Weinberg, who I understand has left the City and left the matter in the hands of Doctor Rowe. And his final report after his examination of Mr. Nelson yesterday [fol. 94] was as I have given it to you. On the basis of that report, this case will proceed to trial on Monday morning.

Mr. Dolsen: I will report that to him.

(Court adjourns at 10:15 o'clock A.M. until Monday, December 17, 1951, at 9:30 o'clock A.M.)

(Monday, December 17, 1951, Court convenes pursuant to recess of Thursday, December 13, 1951 and the preliminary proceedings continues.)

DENIAL OF MOTION TO DISQUALIFY JUDGE.

The Court: We have some preliminary motions to dispose of here, so I will dispose of them. The motion for the disqualification of the Trial Judge on the basis of prejudice against the defendant is overruled. Prepare an order in that case ordering the motion filed and the order made refusing the motion.

The motion for change of venue——

Mr. Nelson: Your Honor, while you are acting on that [fol. 95] may I raise a question you can answer with that motion, because it has to do with it. I assume it is a preparatory motion to this. I want to give it to you, but I couldn't get the Clerk this morning—his office is closed.

The Court: You may hand it up if you have it prepared.

Mr. Nelson: It hasn't been signed. This motion bears on the same question, Your Honor, and I believe I should be entitled to have this motion argued by competent counsel on my behalf. And as you see, I haven't got an attorney this morning as yet. I think the matter is of great importance and you ought to consider my request there that it be argued before another Judge—because I believe that your yourself, cannot fairly sit in judgment of that motion.

The Court: No other Judge would pass upon my feelings as to you, Mr. Nelson, and they would submit it to me regardless. I have thought about the matter and considered [fol. 96] your former petition and this petition that you are filing, you may sign and affix your affidavit, but it does not really assert anything else other than what was included in your former petition so I cannot afford you any opportunity further for argument.

Mr. Nelson: You mean you are going to order me to stand trial here without assistance of counsel?

The Court: Yes, sir. You have been afforded——

Mr. Nelson: Then I make a request that the Court appoint counsel to assist me in that respect so that I could get such assistance as I may.

The Court: Yes, I offered you that.

Mr. Nelson: The Court knows I have two attorneys available, but not at this time. It seems to me that the two-weeks' time that it would take this attorney to come into the case would be a legitimate request. If the prosecution wasn't [fol. 97] so hasty to push this thing—for some reasons that I think are pretty well known—I think I could get the attorneys who could argue the questions properly and put up the kind of a defense that I am entitled to in the prosecution's frame-up here. And, therefore, I ask you, in the first place, to permit me to have those attorneys come into the case when they are able to—and I say it is a reasonable time—two weeks' time. That is my first request, Your Honor.

The Court: All right. See if you can get Mr. Glick, or Mr. Blanchfield, or Mr. Doty. They have volunteered their services before to this defendant. See if you can reach them and have them come here immediately, please—the three of them.

Have the defendant sign that, and swear him to that, please.

(Mr. Nelson sworn by the Clerk and affixes his signature to his petition.)

The Court: You may attach that to this previous petition [fol. 98] that has the order affixed, Mr. Hedley.

Mr. Blanchfield, Mr. Nelson has asked the Court to suggest someone to him that is willing now, that he is willing now to be represented here by counsel. I have asked that you be sent for to see whether or not you would render your services to him at this time, as you were willing to do so before.

Mr. Blanchfield: I have talked with Mr. Nelson on only one occasion—that was the last time the case was up. I haven't talked to him since. So, I would be willing to represent Mr. Nelson if Mr. Nelson can pay a fee.

The Court: I have no authority under the law to ask you to do so gratuitously, except in homicide cases. We have no authority to pay you. I am asking you to submit your services to him at a reasonable price, a reasonable fee, and I will make him available to you, if you are willing, so you may take a few minutes to discuss it with him.

Mr. Blanchfield: All right.

[fol. 99] Mr. Nelson: Your Honor, I think this ought to be made clear: I discussed this with Mr. Blanchfield at the time and I felt that he wasn't prepared to give me the adequate attention that I need in this case; and, consequently I wasn't able to discuss matters further with him. I made this request to you now as distinct from that argument that we had at that time, that at that time I wanted to discuss with attorneys who I'd want to hire to represent me, and as they and I saw fit to represent me in this case.

The Court: We understand that.

Mr. Nelson: You are appointing Mr. Blanchfield here now as an appointed man from the Court; that is a different story. I still want to discuss with him what motions I would like to have filed and how I would like to have them argued. But if I am going to be told that I have to take this particular man, by the Court and told that I have to pay for it even though I feel that the man is not adequate [fol. 100] to represent me because neither the time that he had to prepare the case nor does he know much about the issues involved. I think it is unfair to me, Your Honor. And I feel that if the Court is going to take the responsibility to appoint him, that is a different matter altogether.

The Court: I am not appointing him for you. I have given you ample opportunity to get counsel; and you haven't counsel this morning—here is counsel available if you want to hire him. If you don't want to hire him, say so. That will be the end of this discussion. If there is anyone else you want to call here, or you want me to call, I will call them in.

Mr. Nelson: I told you Mr. Meldahl is prepared.

The Court: I told you, too, I would grant you no further extensions by reason of lack of counsel. Now you are going to trial this morning or you are not, with or without counsel.

Mr. Nelson: That is up to the Court; if you order me to go [fol. 101] to trial here without counsel, I cannot help it, Your Honor, but submit to it with objections to the rulings that you made here this morning. And I say that all the proper motions cannot be made on my behalf by him or any other man that comes in this minute. I have to have time to discuss with him. I want to see whether he agrees

with some of the things I formulated, and other things that I may have not been able to touch because of my lack of understanding.

REFUSAL OF MOTION FOR CONTINUANCE BECAUSE OF LACK OF COUNSEL

The Court: The motion for further continuance because of lack of counsel is refused. It has been refused before and is refused again. Let us proceed with the other matters, if you don't want to hire Mr. Blanchfield. Thank you for coming in.

REFUSAL OF MOTION FOR CHANGE OF VENUE

The motion for change of venue is refused; exception noted. Order the petition filed, and put an order on it refusing it.

MOTION TO APPOINT ATTORNEY AND DENIAL THEREOF

Mr. Nelson: Your Honor just went a little too fast for me here; I want to make this final request: I want the [fol. 102] Court to appoint an attorney to assist me. Irrespective of my responsibility for the financial matter, I want the man to be appointed to assist me in this trial because I cannot adequately defend myself without an attorney.

The Court: It is only in case of indigence (without money) that we appoint any counsel; and in those cases we ask the lawyers here to represent you voluntarily without compensation.

Mr. Nelson: I am not objecting to him because of financial reasons; I am willing to discuss that question. The main thing, is the man able to give me the kind of representation I want? And I still want to discuss on that basis with any man that the Court appoints.

The Court: I am not appointing counsel for you. If you have the means for engaging counsel yourself, you have had ample opportunity to engage them.

Mr. Nelson: Your Honor, you know why I was unable to [fol. 103] to hire an attorney here. Seven hundred attorneys have been contacted in this City, and they don't want to

do it, for the following reasons, Your Honor: Look at this headline here. Take a look at that headline. Isn't that a strange coincidence that the first trial, when it began, the papers in this city started out with stories like this—and this again the day before the trial.

I hold before me—let it be known for the record here—the Monday, December 10th issue of the Sun-Tele, in which there is a story about extensive espionage and so forth, which is fed around this area in all the newspapers. The lawyers know about it; the jurymen, or prospective jurymen know about it; they know there is no chance to have a fair trial. Furthermore, they know what happens to attorneys that come into the case—they know what happened to Mr. Schiesinger, Your Honor; they know the way he has been kicked around. Look what happened to Mrs. Matson, the way she had to complain about—she was handled—the way she was handled by Mr. Margiotti and [fol. 104] others because of ostensible connections with progressive movements and so forth.

Consequently, I am compelled to go to trial in the face of this mass hysteria, where attorneys are afraid even though the Pittsburgh Press has an editorial pleading that there should be attorneys big enough to come forward and defend me in the case. Not one has turned up, Your Honor. And I have written a letter to the National Bar Association; I requested them to assign some one able to defend me. I have written a letter to the Allegheny County Bar Association. And the result is that out of town, as far as the attorneys are concerned, I could get two of them by the first of January—from out of town—who are not subject to this pressure here. But locally, I could get no one. Consequently, I am being compelled by the prosecution, and being railroaded by them to this speedy trial that they call "speedy", just because they have the whole thing rigged; it is a lead pipe cinch for them. That's why they want this trial this way. And Your [fol. 105] Honor is not even willing to consider a reasonable request from me to have an attorney argue the preliminary motions that are before you. I think it is unfair, and I hope that Your Honor will reconsider these things and permit me to have an attorney to argue these matters.

before an impartial Judge. Otherwise, Your Honor, this is not a trial in the sense of the word that trials are understood, but—well, any one can make up his mind what it is.

The Court: Your motion is refused. Now passing on to the next—Change of Venue—that likewise is refused. Your motion will be filed as a matter of record; and I granted an exception to the Court's ruling.

The motion to appoint counsel for you—you asked that, in this petition, I appoint a panel of lawyers from whom you shall make a selection. That is refused; exception noted. The petition may be filed.

Motion to Quash and Dismiss Indictment and Denial Thereof

The motion to quash and dismiss the indictment is likewise refused and an exception noted. You may order [fol. 106] that petition filed as well. Now this petition for continuance of the trial date which you filed and your various affidavits attached to it, it is not in connection with this trial at all; it is in connection with the trial that was held a year ago. We ruled on that orally already here. The present affidavit is presented in written form and we will file that in order to show what the reasons are that you have alleged for asking for further continuance. This long paper which you filed here has no relation to this trial, Mr. Nelson, so I can order that filed. However, the——

Mr. Nelson: Your Honor, may I request it be filed in my behalf because it is the best I could do without counsel. Those are motions that were filed in connection with the trial last year, and I believe they do bear a certain bearing on my case.

The Court: You prepare it——

Mr. Nelson: Pardon!

[fol. 107] The Court: You prepare it and include those things which are relevant here and you may file it later in the day or tomorrow, or at such later date you can, but the action of the Court is the same on it—that further continuance is refused.

Mr. Nelson: Your Honor, I object to your ruling.

The Court: Your objection is entered in the record and your exceptions are noted. That is all on the record.

Mr. Nelson: I want to add the following two clippings to the motion that I had——

The Court: For continuance?

Mr. Nelson: Yes. Because you rushed through so fast I had no chance to read the record even.

The Court: All right, you have the opportunity now.

Mr. Nelson: These two clippings which bear on the ques-
[fol. 108] tion of prejudice on the part of the Trial Judge.

The Court: All right.

Mr. Nelson: One is——

The Court: They are to be attached to the petition, but you may read them if you like.

Mr. Nelson: Yes, Your Honor. I would like to just call your attention to some excerpts.

The Court: All right.

Mr. Nelson: You are compelling me to do this without an attorney; I can only do it the best I can—and I want at least a layman's way to present my argument why I think the present Judge ought to disqualify himself.

On Sunday—that is, in the Sun-Tele of March 19, 1950 appeared a report about the activities of the "Americans Battling Communism". The story goes: "Americans Battling Communism today asked the District Attorney and the United States Attorney to bring criminal pro-
[fol. 109] ceedings against leaders of the Communist Party here for conspiracy and sedition. Acting United States Attorney Edward C. Boyle said he will institute the action at once if the ABC can give him evidence to substantiate the charges." If the ABC, mind you, can give him evidence.

"District Attorney William S. Rahauser was undecided on what action he will take. Heads of the ABC, an organization fighting communism, said they have ample evidence to prove their case under both State and Federal statutes. County Court Judge Blair F. Gunther, a director of ABC, said at least twenty leaders of the Communist Party here will be accused next week of conspiracy and sedition. Any court action is expected to result in one of the biggest trials of its kind in the history of the country. Eleven top leaders of the Communist Party were found guilty in New

York last October, as teaching and advocating the overthrow of the government by force and violence. The trial lasted nine months. Judge Gunther said, in announcing [fol. 110] the action at a meeting in Hotel William Penn: 'Our purpose is to stop talking and take action. The Communists here are always hiding behind the Constitution. I don't think the Constitution protects traitors and spies' — and so forth."

Then in an issue of the Sun-Tele, February 4, the following is found—I won't read the whole long statement here, except to state: "Newly elected officers of Americans Battling Communism include Attorney Harry Alan Sherman, chairman; John Ladesic, vice chairman; Julie Coax, executive secretary; and Paul Kazimer, treasurer. Hugh McKenna, Judges Harry M. Montgomery and Blair F. Gunther, Stanley Bakanas and Theodore L. Morey make up the executive committee."

Now, Your Honor, I——

The Court: Do you want to attach those to the petition?

Mr. Nelson: Yes, I want these two attached, as well as this thing I have already submitted.

[fol. 111] The Court: All right, sir, you have the petition here.

Mr. Nelson: I would like to know, Your Honor, how an organization—if an organization was set up to, let's say, destroy the Trade Unions, and a Judge was a member of that organization to destroy the Trade Unions, and then a Trade Union matter came up before this judge for an impartial judgment or adjudication discussion, how could that judge possibly be impartial in that case where he is a member of an organization that states he is out to indict so and so, and he sees that the indictment is brought about, and after the indictment is brought about he sits as a judge in the court where the issue is to be tried? How can that jury possibly not be affected by the presence of such a judge who made speeches over the radio and so forth—how can that jury possibly be not affected by these stories on the radio and in the newspapers? How can that man possibly get a fair trial? I say, Your Honor, if there is any es- [fol. 112] pectations on anybody's part to have a fair trial here, what has happened so far makes a fair trial impos-

sible. And you are compelling me to go to trial even without the rudimentary experience on trials, on legal questions, makes it doubly worse. And I protest against these procedures, Your Honor. I consider it very unfair; and it is not only an attack upon me but an attack upon other people who in the future may want to disagree or disassociate themselves, or not agree with the majority of you, whatever that "you" may be. Yes, I oppose the Korean War. That is one of the crimes——

The Court: We are not going into our action in Korea. Your motion is refused.

Are there any other motions? An exception is noted, and your remarks are noted on the record; and the action of the Court in refusing is noted. You have an exception.

If there are no other motions we will call Panel Number One——

Mr. Nelson: Just one moment, Your Honor. On the [fol. 113] matter of a jury, I don't know what you intend to do on this question; I believe that I am entitled to make a motion on that question, too. I don't know what the proper motion should be.

The Court: I don't know what you have in mind, so I can't tell you.

Mr. Nelson: All right, a jury panel that has been gone over by Mr. Lewis and Mr. Cercone, and they know exactly who is in that list, Your Honor, is being shoved up here this morning by the prosecution—that's why they are hurrying, Your Honor. These people have been in this courtroom several times; they have a pretty good idea who it was that they were called in for several times.

The Court: They have never been called in for our case here at all, sir.

Mr. Nelson: Your Honor, my impression——

The Court: No jury was ever called in this room to try your case.

[fol. 114] Mr. Nelson: It has been done, Your Honor. I may be mistaken but there was a jury panel in this room when the trial was set to start.

The Court: Well it wasn't here in my presence. There was no jury panel in here.

Mr. Nelson: You were here, Your Honor, when I came

into the room and there was some argument that we made in your chambers, when that panel was here and you made a statement in the court here that the jury is here and the jury panel is here and you are not going to dismiss them because I have no attorney, and so forth. Your Honor, I believe that is on the record.

The Court: All right, if it is on the record I have no recollection of any jury panel.

Motion to Dismiss Jury Panel and Denial Thereof

Mr. Nelson: This particular jury panel should be dismissed and a chance given me for a fair and impartial panel to be drawn at the proper time, when I have been able to prepare properly for the trial.

The Court: That motion is refused. You have two [fol. 115] panels of jurors out there (Panel Number One and Panel Number Two) and if you think there is any favor being shown to the Commonwealth on the part of either of those Panels, then you make your own selection. I will call either Panel you want. Which one do you want called in: One or Two?

Mr. Nelson: Your Honor, I can't proceed without at least some understanding, without some one telling me what my legal rights are. I don't know the first elementary thing about selecting a jury. And if the trial proceeds from now on it will be against my own protests here that I cannot participate in the selection of a jury. It is being done by the prosecution and shoved down my throat by them. I protest, Your Honor. And you be the judge, you go ahead and select the jury that you want.

The Court: I haven't any choice in the matter. You may question the jury; you are entitled to eight challenges without cause, and you are entitled to as many challenges [fol. 116] as you may be able to show cause for.

Mr. Cercone: May we say something for the record, Your Honor? We reiterate again that this defendant just doesn't want to go to trial. I just want to say one thing.

The Court: We don't want any further argument.

Mr. Cercone: When Harry Glick was appointed as a volunteer

The Court: We have ruled on the motion and there is no

need for further arguing on this. Mr. Cercone: We have acted upon the motion for a continuance, change of venue, and the withdrawal of the Trial Judge; and further argument on the part of Mr. Nelson or yourself is unnecessary.

Mr. Cercone: All right.

The Court: Summon Jury Panel Number One. I must limit you, however, to a reasonable number of questions to these jurors. I will grant you a voir dire examination [fol. 117] of each juror, but I must limit you to a reasonable number of questions. How many questions is reasonable in the judgment of each side here?

Mr. Nelson: Your Honor——

The Court: Yes, sir.

Mr. Nelson: This is the first morning I have been up in the last ten days and I don't feel up to it physically. I didn't want to make that a point—actually I don't know what is going on at the present time, as far as being able effectively to even do the elementary things that I could ordinarily do. You are compelling me to go ahead now even when I am not in the physical shape to move.

The Court: Very well, we will note that on the record too.

No more than ten questions will be asked of each witness. If you have a list of questions which you could agree on, that would facilitate matters. If not, the Court will have to rule on the questions as being reasonable or unreason [fol. 118] able as they are asked.

Mr. Nelson: Your Honor, may I make one more request?

The Court: All right, sir.

Mr. Nelson: That you give me time until Monday to have any counsel I may be able to get—until Monday so that I——

The Court: I will grant you no further extension, Mr. Nelson.

Mr. Nelson: Then, Your Honor, I insist that the Court is duty-bound to me to appoint an attorney who can help me in this matter. I know nothing about this question.

The Court: I will help you in the selection of a jury and send for Mr. Blanchfield to come in and aid you in the selection of jurors.